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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE 95th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued) (agenda item 4)

Initial report of Uruguay (CAT/C/5/Add.27)

1. At the invitation of the Chairman, Mr. Lacarte-Muró and Mr. Chabén (Uruguay) took places at the Committee table.

2. Mr. LACARTE-MURO (Uruguay) said that, at the current stage, his delegation had no further information to add to its Government's report (CAT/C/5/Add.27). It would reply to the questions put by the members of the Committee, consult its Minister for Foreign Affairs for any further information that might be necessary and communicate it to the Committee.

3. Mr. GIL LAVEDRA (Country Rapporteur) welcomed the Uruguayan report, which contained comprehensive information on the manner in which Uruguay implemented the Convention. Moreover, the judgements communicated to the Centre for Human Rights and listed on page 26 of the report also contained useful information.

4. Part I of the report gave a good explanation of the relationship between international and domestic law. Article 332 of the Constitution which stated that any lack of corresponding regulations would be made good by application of the basic features of analogous laws, general principles of law, and generally accepted legal doctrine, was a very unusual provision. The judgements communicated by the Government of Uruguay also indicated that the provisions of international human rights instruments were applied by the Uruguayan courts.

5. He asked what rules governed the pre-indictment period, during which ill-treatment often occurred, which authority was empowered to order arrests, how long the period was before the police had to bring a person before a court and who ordered detention incommunicado and how long it could last. Was there a rule on compulsory medical examinations?

6. He had some concerns about decree No. 690/80, which empowered the police to investigate a person's background. The additional material which had been supplied to the Committee and was available from the Centre for Human Rights referred to the rejection of an application for amparo made by a person who had alleged persecution by police, which had detained him for investigation into his background without bringing him before a court. What were the powers of the police to detain persons for inquiries into their background, how long could such detention last and how were such powers monitored?

7. He also wished to know what principles governed the regime of detention and what guarantees were provided for detainees and prisoners. Annex 1 of the documents available in the Centre for Human Rights contained a judgement of the Third Rota Criminal Court of Appeal rejecting an application for amparo made by a court-appointed lawyer against discriminatory measures which had allegedly resulted in ill-treatment, including solitary confinement for more than 90 days and deprivation of visits and books, on the basis of the 1938 Organizational and Administrative Regulations. The Court had rejected the

application for amparo on the grounds that it was not the appropriate channel for challenging a general provision. Many of the issues raised in that case were relevant to the Committee's concerns, for the Court had decided that the 1938 Regulations allowed discriminatory measures that were incompatible with the Constitution. Under articles 316 and 317 of the Code of Criminal Procedure, moreover, a judge was authorized to monitor prison conditions. In the Court's judgement, however, it had been stated that the judge had no power to put an end to any unfair treatment. Did the Government of Uruguay tend to amend the relevant provision? The judgement also appeared to establish that amparo could not be a remedy against an unconstitutional law, but, in most countries, the reverse was true.

8. Turning to articles 1 and 4 of the Convention, he noted that paragraph 39 of the report stated that "the unlawful behaviour classified as the international offence of torture became an additional part of Uruguayan criminological typology", but he considered that a provision of domestic law was necessary to prohibit the crime of torture.

9. He did not agree that the provisions of the Penal Code quoted in paragraphs 8 to 11 of the report covered all the requirements of article 1 of the Convention. Under article 162 (Abuse of office in cases not specifically provided for by law) and article 286 (Abuse of authority against prisoners), the person inflicting torture had to be a public official, whereas that was not the case under the Convention. In addition, the harshest penalty laid down by those provisions was two years' rigorous imprisonment, which did not take account of the grave nature of the offence as required by article 4, paragraph 2, of the Convention.

10. With regard to article 3 of the Convention, the report stated that Uruguay was a party to the 1951 Convention relating to the Status of Refugees and to its Protocol. However, the Convention against Torture prohibited non-refoulement not for political reasons, but on the grounds that the person involved might be subject to torture on his return. The incorporation of the Convention into Uruguayan domestic law might well cover that point, but he would like clarification in that regard.

11. The provisions relating to extradition that were quoted in the report in connection with articles 5 to 8 of the Convention might have been simplified by a reference to article 10, paragraph 7, of the Uruguayan Penal Code, bearing in mind the direct applicability of the Convention. He stressed that there was a need for a provision establishing the appropriate penalty for torture, since article 32 of the Uruguayan Code of Criminal Procedure merely stated that, where no treaty was applicable, extradition might be granted only if the offences involved were punishable by a penalty of not less that two years' imprisonment.

12. In connection with article 11 of the Convention, he asked whether the police were empowered to interrogate during the pre-indictment period and, if so, on the basis of what regulations.

13. The rules governing statements described in the report did not fully correspond to the requirements of article 15, but the matter might be covered by the incorporation of the Convention into domestic law.

14. He asked what political motives had led Uruguay to adopt the Immunity from Prosecution Act ("Ley de caducidad de la función punitiva") and what effect that Act had had on public opinion?

15. What had been the experience of the Prosecutor's Office since the beginning of 1991 as far as more effective supervision of police activities was concerned?

16. He had received reports that, in 1990, public demonstrations had been held in Uruguay to protest the death of two young men and he wished to know what had happened during those demonstrations and what action the Government had taken in response. He also wished to know the outcome of the Supreme Court's inspection of Libertad Prison in November 1990. He was concerned about reported suicides at Migueletes Prison and wondered if the Uruguayan delegation could comment on those reports.

17. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) thanked the Uruguayan delegation for its report. The part containing information of a general nature was extremely interesting and, except for a few problems of interpretation, the legislation appeared to be satisfactory. He welcomed the safeguards represented by the Office of the Visiting Magistrate and the provisions relating to habeas corpus and amparo.

18. Referring to paragraph 11 of the report and article 317, paragraph 3, of the Penal Code relating to premature delivery by a female victim, he asked whether the penalty was still from 20 months' ordinary imprisonment to 6 years' rigorous imprisonment if the newborn child died.

19. With regard to paragraph 14 of the report, he asked whether there were any political prisoners in Uruguay and, if so, how many and under which jurisdiction they fell. He also wished to know whether the independence of the judiciary was guaranteed, how judges were appointed, whether they could be removed, what their retirement age was and how many courts of appeal there were. Since Uruguayan courts of appeal had national jurisdiction, could a case be brought before any of them?

20. He shared Mr. Gil Lavedra's concerns with regard to part II of the report and believed that the definition of torture should be incorporated into Uruguay domestic legislation so that the moral, material and psychological consequences of torture could be prevented.

21. Paragraphs 42 to 44 of the report seemed to apply more to article 10 than to article 2 of the Convention.

22. Paragraph 47, which read "... in the event of an emergency due to very special circumstances, the Constitution thus allows the suspension of security of person", was contrary to article 2, paragraph 2, of the Convention, which stated that no exceptional circumstances might be invoked as a justification of torture.

23. Article 3 of the Convention referred to expulsion, return or extradition, but the report contained no information on expulsion.

24. The comments on article 7 did not make it clear how the principle of aut dedere aut judicare was being implemented.

25. With respect to article 9, he asked whether there was any mutual judicial assistance with countries with which Uruguay had no treaty relations.

26. Concerning article 10, paragraph 2, the report contained no reference to the human rights training of medical personnel, which was particularly important in preventing torture.

27. In connection with article 11, he requested a brief description of the rules of procedure for the questioning of suspects.

28. Referring to article 15, he asked whether there had been any cases in which it had been established that a statement had been made as a result of torture and what decisions had been taken by the courts. What were the rules governing the submission of evidence in Uruguayan law?

29. With respect to article 16, he requested a brief description of the texts governing the treatment of prisoners: were minors separated from adults, women from men, the accused from the sentenced? Had there been any cases of torture and, if so, what had been the outcome?

30. Mr. SORENSEN said that he had been particularly interested by Uruguay's report on account of his own experience at a centre for the rehabilitation of torture victims in Denmark, where a number of Uruguayan torture victims had been treated, and he welcomed the changes that had taken place in Uruguay in 1985 and 1986.

31. Noting that paragraph 6 of the report referred to the 1889 Penal Code and to the current Penal Code, which had come into force through Act No. 9,414 of 29 June 1934, he pointed out that most of the provisions described in the report as affording protection against torture had been in force before 1985, but had proved inadequate to prevent the widespread torture that had occurred. He asked what changes in those provisions had been made since 1985 to remedy their shortcomings, which apparently continued to exist, as a report by Amnesty International had alleged that torture still occasionally occurred in Uruguay.

32. With regard to paragraph 11, the provisions of article 317, paragraph 2, of the Penal Code regrettably appeared to exclude psychological injury, as they referred only to "permanent injury to a sense or to an organ". The last sentence of paragraph 47, which stated that the measures taken in the event of an emergency could not serve as a pretext to commit abuses against the physical integrity of detainees, also seemed to leave room for psychological abuse.

33. Paragraphs 27 and 68 of the report provided information on the remedies available to victims of torture and on the question of compensation and he asked for confirmation that a victim of torture would be entitled both to rehabilitation and to compensation from the State without having to sue his torturer.

34. The situation with regard to exoneration from punishment for persons who committed acts of torture on the orders of a superior was rather vague. Although paragraph 51 stated that the Convention would supersede domestic law, he doubted whether a police officer who was ordered to commit an act of torture would invoke the Convention as grounds for refusing to do so or whether he would even have heard of the Convention.

35. The absence from the provisions adopted in accordance with article 10 of the Convention of any educational measures for medical personnel was a serious shortcoming. He recognized that it was no easy task to change from a situation in which torture was a common practice to one in which it was prohibited, but that very difficulty made educational measures all the more vital. According to the Uruguayan Medical Association, some 600 doctors had been involved in acts of torture in Uruguay. Many of them were anaesthetists who were still practising and many former victims were afraid even to seek ordinary medical treatment in Uruguay for fear of falling into the hands of their former torturers. That issue also raised the important question of impunity: the Uruguayan Medical Association had argued that doctors who had been involved in torture should not be allowed to practise under the new medical health system introduced in Uruguay two years previously, but it had been overruled by Parliament, even though it had collected 500,000 signatures for a referendum on the Clean Slate "Punto Final" Act, which had guaranteed immunity from prosecution for persons guilty of torture under the former regime. The Act also raised the basic question whether democracy could be firmly established as long as those guilty of torture remained unpunished.

36. Ms. CHANET noted that, although the report described the general legal framework for protection against torture, it did not mention any article of the Constitution which related specifically to torture. She asked whether there was any such article or whether acts of torture were merely covered by the provisions of general law.

37. She agreed with Mr. Gil Lavedra and Mr. Dipanda Mouelle that the assurance given in paragraph 38 of the report that "the types of conduct described by the international Covention nevertheless constitute offences and are severely punished by the Uruguayan judiciary" seemed to indicate that Uruguayan law was not in conformity with the Convention, as the provisions of the Penal Code described in the report did not fully cover the definition of torture contained in the Convention. There were some forms of torture which left no trace and, consequently, the provisions relating to serious injury were inadequate. Moreover, article 286 of the Penal Code provided for rather light sentences ranging from six months' ordinary imprisonment to two years' rigorous imprisonment for abuse of authority and the definition of abuse of authority under Uruguayan law did not seem to be in conformity with article 1 of the Convention or to cover the use of torture to obtain information. She therefore requested the Uruguayan delegation to provide further information on lack of conformity between Uruguayan legislation and the Convention.

38. A further shortcoming of Uruguayan domestic legislation was apparent in the provisions relating to article 2, paragraph 3, of the Convention, under which an order from a superior officer or a public authority could not be

invoked as a justification of torture. Although paragraph 51 of the report stated that the Convention would supersede the relevant provisions of domestic law, which were clearly inadequate, it was not obvious whether those provisions had actually been repealed. In view of past experience in Uruguay, their formal abrogation would be desirable.

39. The explanations given in paragraph 52 in connection with article 3 of the Convention referred to the question of refugees, who were in a different category from persons subject to expulsion, and she asked whether there had been any cases in which Uruguay had refused to expel or to return a person who was in danger of being subjected to torture and any cases in which persons had been expelled or returned to a country that provided sufficient guarantees for their security, rather than to their country of origin.

40. With regard to the establishment of Uruguayan jurisdiction over acts of torture, she noted from paragraph 55 of the report that Uruguayan jurisdiction extended to all offences committed in the national territory as well as to those committed abroad in the cases specified by law or by treaty and she asked whether that meant that Uruguay applied the principle aut dedere aut judicare and whether it was possible for a foreigner who had committed an act of torture against another foreigner on foreign territory to be tried for his act in Uruguay.

41. She shared Mr. Sorensen's view that the failure to provide education and information for medical personnel regarding the prohibition against torture was a serious shortcoming and she stressed the need to ensure that such training was offered. Referring to article 11 of the Convention, she wished to know the maximum period of custody, whether persons could be held incommunicado and, if so, for how long, at what point detainees were entitled to the assistance of a lawyer and whether there were any provisions regarding the periodicity of interrogation during custody and judicial control.

42. She also inferred from paragraph 28 of the report that medical examination during custody was unfortunately not systematic and asked for confirmation of whether that was the case. Conditions of detention during custody were of vital importance, as it was at that stage in proceedings that persons were most vulnerable to acts of torture. The Committee had received information from a number of non-governmental organizations concerning ill-treatment in police stations and cases in which persons had died during custody. She invited the delegation to inform the Committee whether any investigations had been conducted into those cases and other complaints of ill-treatment. She also asked whether there was a police authority to monitor police activities and ensure that complaints against the police would be examined impartially and whether there were any special provisions to protect the mentally ill in Uruguay.

43. Mr. MIKHAILOV thanked the delegation and the Government of Uruguay for the report, which gave a full description of Uruguayan legislation that was relevant to the Convention. He inquired whether there had been any actual cases of torture in Uruguay in recent years and, if so, what action the Government had taken in connection with them.

44. His main conclusion, which had already been mentioned by other members of the Committee, was that paragraph 3 of the report, according to which there was no specific offence designated as "torture" under domestic law, appeared to contradict the claim made in paragraph 39 that unlawful behaviour classified as the international offence of torture had become an additional part of Uruguayan criminological typology. That contradiction was confusing because the reference to the "international offence of torture" did not answer the question whether torture was also a domestic offence and the Uruguayan delegation should clarify that point. Many of the provisions of domestic law mentioned in connection with the Convention were of a general nature and the delegation should inform the Committee whether the Government intended to classify torture as a specific offence under its domestic law. He also asked since when the death penalty had been prohibited by the Uruguayan Constitution.

45. Although the difference between habeas corpus and amparo was explained in general terms in paragraphs 32 to 35 of the report, he would welcome a more detailed explanation of how those remedies were actually applied in Uruguay. He wondered whether the provisions relating to abuse of authority and described in paragraph 41, whereby the First Rota Criminal Court of Appeals made its own direct evaluation of cases and prosecuted police officials for abuse of authority, were adequate to prevent such occurrences. He suggested that it would be preferable for a specific provision to be incorporated in the Penal Code.

46. Mr. BURNS said that Uruguay deserved commendation for being one of the few countries that had not made a reservation to article 20 of the Convention and for having made the declarations required by articles 21 and 22, thus recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals. As a result, Uruguay had made the most positive commitment to the Convention of any country.

47. He nevertheless wished to know under what circumstances a detainee could be held incommunicado, for how long and by whom and what safeguards had been built into the system of detention. The explanations in the report concerning the use of involuntary confessions and the respective responsibilities of the police and the examining magistrate had caused him to have some doubts and he asked whether involuntary confessions were admissible in Uruguay as evidence before civil, criminal or military courts.

48. Had the amnesty introduced after the end of the military regime extended both to civil and to criminal liability? Now that Uruguay was a democratic regime committed to the ideals embodied in the Convention, were the same officials, judges, doctors and lawyers as under the previous regime responsible for eliminating torture? Had the present Government taken any steps to dismiss persons who had been involved in acts of torture under the previous regime or had it been prevented from doing so by the amnesty act? If so, he was sceptical about the effectiveness of educational measures regarding the prohibition against torture and asked for assurances that alternative steps had been taken.

49. Mr. KHITRIN welcomed the report, which conclusively showed that Uruguay was endeavouring to comply with its obligations under the Convention.

Paragraph 30 described the judicial safeguards during the serving of the sentence in terms that were all very well on paper, but the Uruguayan delegation should inform the Committee how the judges responsible for supervision actually carried out their task, what their powers were and in how many cases they had brought prosecutions against officials for ill-treatment of detainees.

50. Article 150 of the Penal Code concerned criminal conspiracy, a crime that was extremely difficult to prove and he asked how that article worked in practice, how many persons had been prosecuted under it and whether there might not be an ulterior motive behind it.

51. Paragraph 46 of the report stated that individual security could be suspended only with the consent of Parliament and subject to the supervision of a Permanent Commission. He asked who appointed the Permanent Commission, to whom it was accountable and what its functions were. The very special circumstances under which the Constitution could be suspended and which were referred to in paragraph 47 also required clarification, as did the provisions which were referred to in paragraph 48 on exoneration of subordinates from liability for acts of torture on the grounds of obedience to a superior, which were clearly not in conformity with the Convention and which should be amended. He requested further details on the responsibilities and powers of the Office of the Public Prosecutor mentioned in paragraph 66 and on whether the Office could arrest and indict persons and challenge decisions taken by courts.

52. Mr. PERLAS said that, as a physician, he endorsed the views expressed by Mr. Sorensen. It was very disturbing that, in Uruguay, the medical profession now seemed to be suspect by its very nature and it was vital that everything possible should be done to correct that situation.

53. The CHAIRMAN thanked the Uruguayan delegation for a very interesting and full report. He was pleased to note that the Government had not only ratified the Convention, but had also made the declarations provided for under articles 21 and 22.

54. However, he agreed with other members that the crime of torture did not seem to be sufficiently penalized under Uruguayan law, even if all the penalties referred to in the report were combined. For instance, it would appear from paragraph 11 that even serious and repeated torture, which nevertheless left no trace, would be punished under article 316 of the Penal Code by only three to twelve months' ordinary imprisonment, which seemed a very mild sentence. Even if the offence was aggravated by having been committed by a public official, the maximum penalty under article 320 of the Penal Code would be 16 months, which was also very mild.

55. With reference to paragraphs 46 and 47, he shared the doubts expressed by Ms. Chanet, Mr. Sorensen and Mr. Dipanda Mouelle concerning the circumstances under which security of person could be suspended. Suspension on the grounds indicated did not seem to be compatible with Uruguay's Constitution.

56. The position regarding obedience to a superior seemed somewhat complex. It was stated in paragraph 48 of the report that the Penal Code exonerated from criminal liability any act of obedience to an order, provided that that order came from a competent authority. On the other hand, paragraph 50 stated that Uruguayan legal thinking agreed that a subordinate could refuse to carry out an order that had an unlawful content. There was a danger that exoneration from liability in such circumstances would make things far worse for the subordinate and the statement in paragraph 50 did not seem very convincing. International law could be assumed to have precedence over domestic law, if directly applied, but might not such application aggravate the situation if it came into conflict with a country's Penal Code? In such circumstances, could a subordinate invoke the concept of an error of law, if that concept was recognized in Uruguay?

57. It would appear from paragraphs 57 to 60 of the report that article 6 of the Convention was not fully applied in Uruguay, since that article provided that, if there was even a suspicion that a person in Uruguayan territory was guilty of acts of torture, there was no need for any formal application for extradition. It was also not clear from those paragraphs how article 9 of the Convention was applied, unless it could be assumed to apply directly. If that was the case, so much the better, but if it was not, the legislation would appear to be defective in that regard.

58. Lastly, he associated himself with the comments made by Mr. Burns, Mr. Sorensen and Mr. Khitrin on the subject of the amnesty law, and would appreciate further information on that point.

59. Mr. LACARTE-MURO (Uruguay) said that, by its acceptance of articles 21 and 22 of the Convention, his country had opened its doors wide to a full and frank dialogue with the Committee. It now welcomed discussion not only on the issues covered by the Convention, but also on questions relating to human rights in general.

60. In order to be able to provide accurate answers to the often detailed and technical questions asked by the members of the Committee, he would appreciate being given more time to allow for consultations with his country's authorities.

61. The CHAIRMAN said that, although it was the Committee's usual practice to hear the replies of States parties to questions during the course of the same day, he appreciated that the Uruguayan representative would need more time. Accordingly, Uruguay's replies could be scheduled for the morning of Thursday, 21 November 1991.

62. Mr. Lacarte-Muró and Mr. Chabén (Uruguay) withdrew.

The meeting was suspended at 11.55 a.m. and resumed at 12.05 p.m.

Initial report of Australia (CAT/C/9/Add.8)

63. At the invitation of the Chairman, Mr. Walker and Mr. Broome (Australia) took places at the Committee table.

64. Mr. WALKER (Australia), introducing the initial report (CAT/C/9/Add.8), said that his country unequivocally supported the work of the Committee and welcomed the opportunity for a constructive dialogue with it.

65. It was his Government's policy to ensure, before ratifying a convention, that Australia was in a position to comply with the international obligations it would assume under it. In the case of the Convention against Torture, existing domestic law was in most respects adequate for compliance. Acts which would amount to torture would in general be covered by such offences under criminal law as assault, infliction of bodily harm, sexual assault, rape, threat to kill or injure, and deprivation of liberty. Thus, a victim of the unlawful use of force could seek compensation under various criminal injuries compensation schemes or under provisions of domestic law such as a common law action in tort. Damages could be sought for both physical injury and nervous shock. However, new legislation would be needed to ensure that the Convention could be fully implemented in Australia.

66. The Crimes (Torture) Act 1988 fulfilled Australia's obligations under the Convention in relation to acts of torture committed outside the jurisdiction of State and territory criminal law. That act had made an offence of torture committed outside Australia by a person who subsequently entered the country a federal offence. In effect, it therefore made Australia's criminal law applicable to acts committed outside Australia.

67. Acts amounting to torture committed in Australia would likewise be offences under the criminal law and would be investigated and prosecuted. There were special procedures in all jurisdictions to ensure competent investigation of allegations of torture by police or prison officers. Complaints about police conduct were generally dealt with first by an internal investigation body and later reviewed or monitored by an external body such as an ombudsman. Several jurisdictions had created specific legislative schemes for investigating complaints about the police. In others, a State ombudsman had been given wide powers to investigate such complaints. Complaints about treatment in prison could be made to official prison visitors or inspectors, who were independent persons with a statutory function of visiting prisons and inquiring into the treatment and condition of prisoners. In most States, the ombudsman also had authority to deal with complaints. In the federal context, persons who believed that their human rights had been infringed could complain to the Human Rights and Equal Opportunity Commission.

68. In Australia, the military did not normally have any authority or jurisdiction over civilians. Military personnel were subject to the law of the land and could not be required to perform actions contrary to law. Even in very exceptional circumstances, when the armed forces were required to protect constitutional processes, they would be involved only after the Government of a State had made a request to the Governor-General, who would then take the necessary legal measures in accordance with procedures agreed by Parliament. Military personnel held in detention were protected under the Defence Force Instructions, which gave them the right to make complaints to the officer in charge; such complaints had to be investigated without delay.

69. Similarly, Australia's security and intelligence agencies had no powers of arrest or detention. The powers of the Internal Security Agency (ASIO) had been defined by an act of Parliament and its compliance with its legal obligations was monitored by an independent inspector-general. Members of intelligence and security agencies were in no way exempt from ordinary criminal and civil law.

70. The Committee might be interested in the findings of a recent report by the Royal Commission to investigate aboriginal deaths in custody. Although the Commission had not found that any of the deaths investigated were the result of unlawful violence or brutality by police or prison officers, it had recommended that the Government should consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights and make a declaration under article 22 of the Convention. The Commission had adopted other recommendations relating to custodial practices, sentencing and training for police and custodial personnel. Those developments would be covered in more detail in Australia's second report.

71. He was pleased to announce that the Australian Government had acceded in September 1991 to the Optional Protocol to the International Covenant on Civil and Political Rights, as recommended by the Commission. That accession was an indication of the high priority given to human rights by the federal Government.

72. The possibility of making the declaration provided for under article 22 of the Convention was currently under discussion. That demonstrated Australia's willingness to have its human rights record scrutinized.

73. His Government welcomed the opportunity for a frank and open discussion of how it was implementing the Convention. It believed that it was thus demonstrating its sincere opposition to torture and any other cruel, inhuman or degrading treatment, as well as its support for all the monitoring bodies established under the human rights treaty system.

74. Mr. BURNS (Country Rapporteur) commended the Australian delegation on its excellent and detailed report (CAT/C/9/Add.8). The Committee would welcome some explanation of how the law and, in particular, the criminal law operated under Australia's federal system. What process did the federal Government have to go through in order to obtain the consent of States to carry out measures in compliance with its international obligations? He had understood from the oral introduction that federal legislation enabled Australia to exercise extra-territorial and, indeed, universal jurisdiction where acts of torture were concerned. He had understood that such legislation would not amend State criminal codes, but would it have the effect of amending the Australian capital territory's criminal code?

75. He had been very impressed by the comprehensive system set up in Australia to protect human rights norms, particularly the federal legislative scheme, which seemed to be unique, certainly within the Commonwealth. He had also been struck by Australia's very comprehensive complaints mechanisms, both with regard to the police and with regard to prisons, and by its comprehensive criminal injuries compensation schemes, although the latter did seem to have relatively low upper limits.

76. Could the Australian representative confirm that the definition of torture contained in article 1 of the Convention had not, in fact, been directly incorporated into domestic legislation, except in so far as the jurisdictional provisions of the 1988 legislation were concerned? Regarding article 2, paragraph 60 of the report stated that the use of force was permissible "in the course of a lawful correction of a child". Did Australia still recognize corporal punishment in schools? He had been greatly struck by the statement in paragraph 67 that there were no exceptions to the prohibition of torture and that an order from a superior could not be invoked as a justification for torture. That provided very comprehensive protection against the kind of abuses that the Committee sometimes had to deal with.

77. With regard to the application of article 3, he pointed out that Australia's obligations were not confined to persons covered by the definition of refugees, but extended to persons with well-founded fears of ill-treatment on other grounds than those listed in the 1951 Convention relating to the Status of Refugees. Concerning article 5, he would like to know whether an Australian State would have the jurisdiction to prosecute for an offence committed outside Australia under the 1988 Act, along the lines indicated in paragraph 88.

78. He welcomed the statement in paragraph 97 that Australia accepted the provision of article 6, paragraph 1, that offences involving acts of torture were deemed to be extraditable under any existing extradition treaty. Did Australia have universal jurisdiction in that connection?

79. He was pleased to note from paragraph 100 that Australia had one of the most highly developed statutory schemes in the world relating to mutual judicial assistance in criminal matters. He would welcome clarification as to the scope of the provision referred to in paragraph 101, whereby persons could be compelled to give evidence in relation to the prosecution of crimes in another country.

80. With regard to paragraph 109, he wished to have more details about the legal regimes that applied to mental health institutions. For example, was electro-convulsive therapy part of the ordinary medical treatment given in such institutions and, if so, in what circumstances could it be applied? What provision was made for review in the case of persons involuntarily, or even voluntarily, detained in such institutions and what protection did they have regarding the duration and nature of their treatment? What special educational opportunities were available for medical professionals working in police stations, prisons and mental health institutions to ensure that they were made aware of their obligations to avoid ill-treatment of detainees, prisoners and patients?

81. Referring to paragraph 114, he asked whether the establishment of the post of ombudsman was a relatively recent protective measure and how wide-ranging the ombudsman's functions were.

82. Concerning the rehabilitation of victims of ill-treatment and bearing in mind that Australia was a country which received a large number of refugees,

with the result that the Australian authorities had to be concerned with refugees from countries in which a regime of torture prevailed, he asked whether the special rehabilitation centres referred to in paragraph 128 included social as well as medical services, whether they were financed by State and federal authorities or privately, how many persons benefited from such services and whether any special training was provided for medical professionals involved in treatment relating to the sequelae and trauma of torture.

83. In connection with article 15, he asked whether extorted confessions were admissible in any part of Australia. He commended the broad definition of cruel, inhuman or degrading treatment given in paragraph 132.

84. Lastly, he asked what form liaison took between the States and the federal Government, on the one hand, and the Immigration Appeal Board and the Attorney-General's Department, on the other.

85. Mr. PERLAS (Alternate Country Rapporteur) said that he endorsed Mr. Burns' request for clarification concerning the federal system in Australia. He would also like to have statistics and details of any reported cases of torture and information concerning the procedure from the time a person was taken into custody until a judgement had been handed down. He asked whether the specific crime of torture existed elsewhere than in the Australian Capital Territory.

86. Referring to article 3 of the Convention and paragraph 70 of the report, he said that he wished to know whether the extradition laws referred specifically to the situation where a person might be extradited to a country where there was a risk that he might be tortured. He asked why the list contained in paragraph 83 did not cover the same problems in all States and territories.

87. Were psychological or psychiatric reactions not regarded as falling within the categories specifically mentioned in paragraph 80 also taken into account in domestic legislation?

88. He wondered whether there was any contradiction between the statement made in paragraph 20 that in Australia treaties were not self-executing and the statement contained in paragraph 97 concerning extradition.

89. As to paragraph 109, he asked for information on whether special training was provided for physicians regarding the prohibition against torture. He also requested clarification of what was meant by "wilful neglect of a psychiatric patient". Lastly, he endorsed Mr. Burns' comments concerning the hospitalization of the mentally ill and the possibilities of appeal in respect of discharges from mental institutions.

90. Mr. SORENSEN, referring to paragraph 109, said he agreed with the view expressed by Mr. Burns and Mr. Perlas that there was a great need for medical training in relation to torture because Australia accepted large numbers of refugees, between 20 and 50 per cent of whom were estimated to have been subjected to torture. He commended the Australian authorities for having

established the specialized rehabilitation services referred to in paragraph 128 and noted that the staff of such centres might be well qualified to provide training for medical and other professionals in connection with torture.

91. Ms. CHANET, referring to paragraphs 20 to 22 of the report, asked whether Australian legislation contained any specific provision prohibiting torture. Was the Human Rights and Equal Opportunity Commission mentioned in paragraph 31 competent to hear complaints of torture or ill-treatment and had there been any specific cases of such complaints? Further clarification about the ombudsman's functions, the number of posts of ombudsman which existed and the relationship between the Australian ombudsman and the Commonwealth ombudsman would be useful.

92. In connection with articles 1 and 4 of the Convention, she endorsed the comments made by Mr. Burns and Mr. Perlas concerning the application of legislation in a federal system. It seemed to her that a person who had committed torture or inflicted suffering might be subject to legislation that varied in harshness depending on the State or territory concerned.

93. In connection with article 11 of the Convention and paragraph 110 of the report, she requested further clarification on how the internal review of rules and practices regarding the custody and treatment of persons in detention was carried out in practice. She also wished to know what stage had been reached in the work of the Royal Commission to investigate Aboriginal deaths in custody.

94. Mr. GIL LAVEDRA said that, like other members of the Committee, he would be grateful for further clarifications concerning the federal system in Australia, particularly since the provisions of the Convention were not directly applicable and special domestic legislation was required to give effect to them. The federal system which had been described was such that, without precise details of the relevant legislation in each State and territory, it was difficult to have an overall picture of the situation in Australia with regard to the provisions of the Convention.

95. He asked to what extent the constitutional provisions guaranteeing basic human rights were applicable to all States and why certain basic civil and political rights were not specifically mentioned. With regard to paragraph 24, for example, he wished to know which basic human rights were recognized in common law. As to paragraph 26, he requested information on the rules relating to the jurisdiction of federal and local courts. The statement in paragraph 30 on the major statutory protections of human rights was general and offered no specific details. What were the mandate and powers of the Human Rights and Equal Opportunity Commission, as mentioned in paragraph 31, and what was its relationship with the different States and territories? Paragraph 34 described federal legislation to protect human rights, but did not specifically refer to the prohibition against torture.

96. Referring to paragraph 44, he asked what competence the federal Parliament had in relation to criminal offences, particularly in the light of the Crimes (Torture) Act 1988. Paragraph 63 seemed to indicate that federal legislation concerning torture was related to territorial jurisdiction;

consequently, the definition of torture in each State would be of particular relevance, as it might mean that similar criminal acts would not necessarily be punished in the same way in all States. He referred in that connection to article 4, paragraph 2, of the Convention.

97. In relation to paragraph 67, he asked which legislative act contained the provision that an order from a superior officer could not be invoked as a justification of torture and whether it was valid in all States and territories. He also wished to know which legislative act contained provisions on applications for refugee status and whether or not such legislation was federal. Lastly, he requested clarification of the statement that the Crimes (Torture) Act 1988 satisfied the requirements of article 5 of the Convention. Why did paragraph 89 of the report say that article 5, paragraph 3, had no operation in relation to Australia?

The meeting rose at 1.20 p.m.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE 96th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 November 1991, at 3 p.m.

Chairman: Mr. VOYAME

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Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Australia (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-14039/3980B

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Australia (CAT/C/9/Add.8) (continued)

1. At the invitation of the Chairman, Mr. Walker and Mr. Broome (Australia) took places at the Committee table.

2. Mr. GIL LAVEDRA (Country Rapporteur), referring to paragraph 98 of the report, which stated that "Australia does not make extradition conditional on the existence of a treaty", asked whether the Convention against Torture was regarded as a sufficient legal basis for granting extradition to a country which had requested it.

3. Another matter on which he would like clarification was whether the Mutual Assistance in Criminal Matters Act referred to in paragraph 100 was part of federal legislation.

4. With regard to the training provided to police and prison officers, he pointed out that the replies contained in paragraphs 102 to 107 related only to Tasmania, Queensland, Western Australia and New South Wales. What was the situation in the other States, the Northern Territory and the Australian Capital Territory? Were the rules which professional ethical codes and the Hippocratic Oath imposed on members of the medical profession binding in all States?

5. Referring to custody and the treatment of detainees, he expressed surprise that the report made no mention of the authority competent to decide on detention. Could an accused person be held incommunicado in Australia and, if so, for how long? Did an accused person have the right to communicate with his lawyer or to undergo a medical examination? Within how much time was he required by law to be brought before a judge?

6. In paragraph 111, it was stated that all acts of torture were considered offences under the criminal law and as such would be investigated and prosecuted according to special procedures in all jurisdictions. He would like to know more about specific legislation, such as the South Australian Police Act 1985, which established investigation procedures, and to have further information on the relevant legislation in different States.

7. With regard to prison inspections, as referred to in paragraph 115, he requested information about the authority in each State responsible for monitoring both measures of detention and conditions and accommodation in prisons. The Human Rights and Equal Opportunity Commission was apparently authorized at the federal level to hear complaints from detainees who considered that they had been subjected to ill-treatment, but what federal authority was ultimately responsible for prison institutions?

8. He also asked about the legal basis for the statement in paragraph 130 that confessions or admissions obtained by coercion would be inadmissible as

evidence in Australian courts. Since Australia had a federal system, were specific arrangements made within each jurisdiction to ensure that such statements could not be used as evidence?

9. It was very difficult to grasp all the subtleties of a system which was as complex as the Australian legal system. To understand fully how it worked would require in-depth knowledge of the machinery of each State which could not be fully described within the framework of a single report. He therefore had the impression that he had put questions to several legislatively and politically independent States.

10. Mr. MIKHAILOV (Alternate Country Rapporteur) welcomed the report submitted by the Australian authorities, which was both complete and specific.

11. Referring to paragraph 58 of the report, which stated that the definition of torture, as contained in the Convention, was incorporated in Australian domestic legislation, he asked whether all the objective and subjective aspects of torture were covered by the Crimes (Torture) Act 1988 and to which penalties persons who had committed crimes which might be assimilated to any form of torture were liable.

12. In paragraph 77, it was stated that a person found guilty of aiding and abetting in the commission of an offence was liable to a maximum penalty of two to five or even ten years imprisonment, depending on the criminal legislation involved and the State in which the offence had taken place. He was surprised that there was such a wide range of penalties and asked whether, for example, the maximum penalty of five to ten years' imprisonment applicable in South Australia served to punish other offences as well or applied when there was a combination of offences.

13. He also asked whether "assault", which was prohibited under criminal law, was considered a crime against peace?

14. With regard to 132 and 133 of the report, he had wondered what legal and administrative penalties were applicable to public officials who inflicted "cruel, inhuman or degrading treatment or punishment".

15. The CHAIRMAN, speaking as a member of the Committee, commended the very well structured report submitted by the Australian Government. He was not at all disconcerted by a federal system which was comparable to that of his own country, Switzerland, where 28 different codes of penal procedure coexisted, but he did have some difficulty in understanding the division of legislative power between the central authority and the States. Which bodies were competent to make criminal law?

16. He asked whether all forms of torture and their sequelae as referred to in the Convention were covered by Australian legislation.

17. In paragraph 103, it was stated that "persons under arrest shall be afforded no justification for saying that their treatment has been other than civil and reasonable". He asked about the meaning of that sentence, which might give the impression that the police were not civil to persons under arrest.

18. Concerning article 11 on the treatment of detainees, he asked whether the systematic reviews carried out in Australia involved unannounced visits by judges to places of detention.

19. With regard to the compensation of victims of torture, he wished to know whether the term "injury", which referred to bodily injury and mental and nervous shock, also covered any physical or psychological trauma which might be caused by ill-treatment. The maximum amount which could be awarded as compensation did not seem very high. He was also surprised that the children of a victim were not entitled to any compensation for grief (paras. 124 and 125).

20. He requested to have further information on paragraph 126, which gave the impression that compensation was paid to persons who had financially maintained a deceased victim, but not to those who had depended financially on him.

21. The report seemed to indicate that an offence committed by a public official did not always entail State responsibility. Was that in fact the case?

22. He pointed out that paragraphs 130 and 131 of the report referred only to confessions and admissions obtained by force and not to statements of all kinds, which, under article 15 of the Convention, also included evidence and expert reports.

23. Mr. WALKER (Australia) thanked the members of the Committee for the trouble they had taken to grasp all the subtleties of the Australian legal system and to prepare such specific questions. He recognized that a federal system might sometimes be difficult to understand, but undertook to make it clearer by emphasizing its many advantages. Under the Constitution, the federal Government could, after having ratified an international instrument, enact legislation to implement its provisions at the federal level. That federal legislation was then enforced by the courts of the States and self-governing territories.

24. That procedure, which had been followed on quite a few occasions, was, however, not the preferred one, especially in the case of human rights instruments, as it involved a number of political and practical disadvantages. The States and territories enjoyed legislative autonomony; they were therefore entitled to be surprised if the federal Government adopted legislation in areas within their jurisdiction. In practice, two different types of legislation might then be applicable and that would create confusion. The Government could therefore take another approach, which was longer but fairer. Before acceding to the Convention against Torture, the federal Government had consulted the authorities of the different States and self-governing territories and had asked them to ensure that their legislation prohibited all acts covered by the Convention. Those texts did not all use the exact wording of the Convention, but their common objective was to prevent torture. Where there were gaps, the State concerned was required to amend legislation accordingly. That procedure took time, and that was why the federal Government was slow to become a party to international instruments,

but it did make it possible to state, on behalf of all law enforcement officials throughout the federal territory, that all jurisdictions fully implemented the provisions of the Convention.

25. In reply to members of the Committee who had asked whether the Crimes (Torture) Act 1988 amended any of the provisions of the Criminal Code of the Australian Capital Territory, he pointed out that any discrepancies related only to offences committed in other countries, and not in Australian territory.

26. Mr. BROOME (Australia) said that corporal punishment was prohibited in most if not all public educational institutions. Private schools which reserved the right to apply such punishment first had to have the consent of parents or to have informed them of the special circumstances in which corporal punishment might be inflicted.

27. Mr. WALKER (Australia) said that any application for asylum made by a person who could not claim refugee status, as defined by the 1951 Convention, but who might be subjected to torture if he returned to his country of origin was communicated to the Minister for Immigration, who could grant an entry permit for humanitarian reasons. Before taking such a decision, he nevertheless requested the opinion of an ad hoc committee composed of Ministry of Justice and Foreign Ministry officials and representatives of non-governmental organizations and the Office of the United Nations High Commissioner for Refugees.

28. Mr. BROOME (Australia), replying to the question he had been asked about what happened to a foreign national who applied to be able to stay in Australia, although he had committed a criminal offence, said that the request was transmitted to the ad hoc committee or to a representative of the Ministry of Justice, who ensured that the authorities in charge of prosecution took the appropriate decisions, in accordance with the obligations established by international treaties, the Convention against Torture and the Crimes (Torture) Act 1988.

29. Mr. WALKER (Australia), referring to the universal jurisdiction of Australian justice, said that any person who had committed an offence outside Australian territory was liable to the penalties provided for by Australian criminal law.

30. Mr. BROOME (Australia), commenting on annex H to document CAT/C/9/Add.8, which reproduced the Mutual Assistance in Criminal Matters Act, said that the Act enabled Australia to fulfil its bilateral and multilateral obligations relating to investigations. A country which wanted an investigation to be conducted in Australia could so request the Attorney-General, who would assign an examining magistrate to carry out that task in the same way as for an Australian court. The magistrate's report was then transmitted to the country in question.

31. The training of police officers could vary from State to State, but all States had established intensive and regular programmes in which police officers received information about their statutory obligations. The federal police also had a similar programme. It could be said that, in Australia, both police officers and prison staff were informed of their obligations under the Convention.

32. Mr. WALKER (Australia) stressed the fact that military personnel had no jurisdiction over civilians and that they received training similar to that of the police in so far as their rights and duties were concerned. Electro-shock therapy had apparently been abandoned; he believed that he would be able to confirm that to the Committee at a later stage. In relation to a question on the internment of mentally ill patients, he said that, in Australia, no one could be detained other than by a court order. If a person who had agreed to be admitted to a psychiatric establishment later wished to leave, it was up to the medical personnel to decide, in the patient's interest, whether he should be allowed to do so. In that connection, he noted that the Human Rights and Equal Opportunity Commission was carrying out a broad study on the rights of mentally ill persons.

33. Mr. BROOME (Australia) said that his delegation would provide additional information on the legislation of the States of the Australian Commonwealth relating to the rights of the mentally ill. To his knowledge, federal rules required that a decision concerning a mentally ill person's release from an institution or the continuation of his treatment had to be taken by several doctors.

34. The training of medical personnel in prisons and psychiatric institutions dealt with problems which had previously been unknown, such as migrant medicine. Various bodies were qualified to consider cases involving injuries suffered either by persons interned in Australia or by migrants in their countries of origin. A service of the Ministry of Immigration was specifically responsible for such matters and provided its officials with training which enabled them to recognize victims of torture or serious injury. In 1989, three grants had been made for a treatment and rehabilitation programme for victims of torture and trauma in which doctors, dentists, occupational therapists, psychiatrists and voluntary associations were taking part. Financing for that programme was continuing.

35. Mr. WALKER (Australia), replying to a question from the Committee, said that he was not in a position to say exactly how many persons were in rehabilitation centres.

36. Mr. BROOME (Australia), replying to a question by Mr. Burns, said that the post of ombudsman had been created in the mid-1970s and that, since then, there had been one ombudsman in each State plus a federal ombudsman. They could investigate without restriction all the activities of Government bodies and their investigations, which were taken very seriously by those concerned, could lead to the persons responsible being brought to court, to fines or to administrative penalties. In reply to another question by Mr. Burns, he emphasized the fact that testimony obtained by extortion was never taken into consideration. With regard to the relationship between the authorities responsible for refugees, health and prisons, he pointed out that the specialist Refugee Status Review Committee was composed of representatives of the Foreign Ministry, the Ministry of Justice, the immigration services and a non-governmental organization and was advised by a UNHCR representative. That Committee acted as an appeal body when the immigration authorities had, in the first stage, refused to grant immigrant status; it could make recommendations to the public authorities.

37. Mr. WALKER (Australia), replying to a question by Mr. Perlas, said that he did not have statistics on cases of torture; what was more, the Convention did not seem to have been invoked in Australia. However, he could state that all complaints against the police in 1989-1990 had been investigated and that, in many cases, the court's conclusions had been in favour of the complainants.

38. Mr. BROOME (Australia), replying to another question from the Committee, said that police custody varied according to the State, but the maximum was 6 hours; it could, however, be extended for medical reasons to allow time to enter into contact with a lawyer or if the judge lived far away. Any statement by a person in police custody beyond the maximum period was inadmissible. Once they had been charged, persons in police custody were, in most cases, released on bail. Pre-trial detention was therefore unusual in Australia. Legal aid was available in all Australian jurisdictions; the federal Government had an annual budget of $A 100 million for that purpose.

39. Mr. WALKER (Australia) informed Mr. Perlas that the offence of torture was not specifically defined in Australian Commonwealth legislation and that the authors of the report (CAT/C/9/Add.8) had not so much sought to be exhaustive as to give an illustration of the main lines of the Australian system.

40. Mr. BROOME (Australia) said that extradition could not be granted in Australia if it involved a breach of the obligations assumed by the country under international treaties. It was therefore not possible to extradite a person who might be liable to capital punishment in the country to which he would be extradited. Extradition treaties provided for the recognition of international human rights instruments and could be amended when Australia ratified new conventions.

41. With regard to the training of medical personnel and, in particular, the training of doctors who examined refugees to detect possible traces of torture, he said that he had taken note of the comments by Mr. Sorensen.

42. Mr. BROOME (Australia) said that the National Health and Medical Research Council, a national medical research body, had recognized the need to assist persons who had suffered injury or torture.

43. A professor of medicine had been requested to draw up a report to determine the psychological and other problems that affected refugees and torture victims and to define the services and assistance to be provided to such persons. If the completed report contained elements of interest to the Committee, the Australian Government would draw attention to them in its next report to the Committee.

44. Mr. WALKER (Australia), replying to a member of the Committee who had asked whether the prohibition against torture was provided for in the Constitution, said that that was not the case and that, in fact, very few basic rights were provided for in the Constitution.

45. With regard to Ms. Chanet's interesting comment about the list of offences which corresponded to acts of torture, which might reveal possible gaps or anomalies and which, for example, raised the question of the

difference between bodily harm and grievous bodily harm, he said that the characterization of the offence depended on the evaluation of the judge; the severity of the penalty was in proportion to the seriousness of the offence. He did not see any "gap" in the list of offences which would enable anyone to commit torture with impunity. He pointed out that current practice tended towards uniformity of sentences. The fact that a person who committed acts of brutality was a public official made the offence more serious in that it brought it within the scope of the Convention. Moreover, that fact generally involved an additional penalty, namely, the dismissal of the official.

46. In connection with the commission of inquiry into conditions of detention of Australian aborigines, reference had been made to the Royal Commission on Aboriginal Deaths in Custody, which had carried out its mandate very fully. The Federal State and Governments had started to take measures to apply the Commission's recommendations. It should be noted that the reforms being implemented were likely to be applied to all detainees and not only to aboriginal detainees.

47. Mr. WALKER (Australia) said that it had been difficult for some members of the Committee to understand Australian legislation and the operation of the legal system, as described in the report, because it had not been physically possible to provide information on the legislation of all States or to transmit to the Committee records of judgement, which were essential in the common law system. It was also true that some paragraphs, such as paragraph 34, related to rights, such as the right to the protection of privacy, which were not specifically covered by the Convention. In an effort to be complete, the authors of the report had perhaps introduced too much non-essential information which interfered with an overall understanding of the document. He also took note of the comments of Mr. Gil Lavedra on the over general nature of paragraph 30. That paragraph was in fact intended as an introduction to subsequent paragraphs, which were more detailed. It was the federal Government which was responsible for the fulfilment of Australia's international obligations. It ensured that the legislation of each State was in conformity with the obligations resulting from international commitments.

48. Mr. BROOME (Australia), referring to the division of jurisdiction between the Federation and the States (para. 26 of the report), said that federal areas of jurisdiction were specifically enunciated in the Constitution; all others belonged to the States. For example, trade, foreign affairs, telecommunications and immigration services came within federal jurisdiction. The federal courts heard offences against the laws adopted by the Federal Government in those fields. Generally speaking, criminal law was a matter for the jurisdiction of the States. Offences which constituted a violation of the Convention were punished according to the legislation of the State concerned.

49. With regard to the Human Rights and Equal Opportunity Commission and its links with the States, he said that it worked in liaison and in cooperation with related bodies in the States. There were arrangements by which, for example, a particular body could act as the representative of another. If a complaint was filed with the Commission, it conducted an investigation. When the nature of the offence so permitted, for example, in the case of an act of discrimination based on sex, the Commission would try to settle the matter between the competent authorties and the complainant by putting a halt to the

conduct in question and, possibly, providing compensation for the victim. If the nature of the offence justified proceedings, the Commission transmitted the results of the investigation to the police of the State concerned, which determined whether the act was a violation of the legislation of that State. The fact that the Commission was a federal body guaranteed that, if necessary, all those responsible for an offence could be charged and that complaints would not go unheard. The Commission had never had before it an allegation of conduct amounting to a violation of the Convention.

50. Mr. WALKER (Australia), referring to the composition of the Commission (para. 31 of the report), said that racial discrimination, sexual discrimination and the protection of privacy were the three areas where complaints were most frequent. The Human Rights Commissioner was responsible for all complaints not within the jurisdiction of other commissioners and, consequently, for offences which were within the scope of the Convention. He was currently paying specal attention to questions relating to the mentally ill and the rights of the child. As to the competence of the ombudsman, each State and the Commonwealth had either an ombudsman or a body with the same powers which was authorized to hear complaints concerning both State and federal legislation. A person who was a victim of a human rights violation could therefore apply to several bodies. Despite the risk of duplication of effort, it was better to have too many rather than too few.

51. Mr. BROOME (Australia), replying to a question on the applicability of article 4, paragraph 2, of the Convention, said that the Australian legal system was a discretionary one in which the judge had the power to determine the nature of the offence and to decide the appropriate penalty in the light of the seriousness of the offence. The system also authorized the Attorney-General to appeal against a penalty which was obviously inadequate. Any act of torture would therefore be liable to an appropriate penalty that took account of the seriousness of the offence.

52. In reply to a question relating to the basis of the principle that the order of a superior or public authority could not be invoked as a justification of torture, he said that that was a common law principle, even if it was embodied in some legislative texts. In addition, the Crimes Act 1900 was not anachronistic, as its original text had been amended several times.

53. Replying to a request for clarifications concerning paragraph 89 of the report, which stated that Australia interpreted article 5, paragraph 3, as having no operation in relation to Australia, he said that federal law explicitly provided that there was no legitimate excuse for acts of torture and that such acts were unacceptable whatever the circumstances. The authors of the report had intended to make it clear that Australia had fulfilled its obligations under article 5 of the Convention to the greatest extent possible.

54. The meeting was suspended at 5.05 p.m. and resumed at 5.15 p.m.

55. Mr. WALKER (Australia), supplementing Mr. Broome's replies at the request of the members of the Committee, said that there was a medical association which regulated medical studies and the subsequent practice of medicine and had the authority to dismiss a doctor form the association for unethical

practice. He agreed that paragraph 110 of the report was rather brief and that the next report should be more detailed. There was no federal prison as such; any person found guilty of a violation of a federal law served his sentence in a State prison.

56. Several members of the Committee had expressed concern about the fact that Australian law did not attach enough importance to psychological and mental suffering, which was not specifically mentioned. It should be made clear that the offence of assault did not necessarily mean physical assault. In common law, any threat of assault, any intimidation or any threat against a third person could be covered by the concept of assault, which therefore included mental and psychological suffering.

57. Mr. BROOME (Australia) said that Australia was in a position to affirm that, despite the fact that legal systems and structures varied from one State to another, legislation on the gathering of evidence was such as to rule out the use of evidence obtained other than by lawful means because the States which had codified the gathering of evidence had not in any way amended the common law rule which prohibited the use of evidence obtained other than by lawful means.

58. He agreed that paragraph 103 of the report was badly drafted; the content of the third subparagraph simply meant that the persons concerned should never have occasion to complain about not having been treated other than civilly and reasonably.

59. With regard to article 11 of the Convention, which called for systematic reviews of all provisions relating to interrogation, he stressed that the fact that the conduct of a trial was totally independent of the police investigation which had preceded it was a guarantee in addition to the possibility of making a complaint either to the ombudsman or to members of parliament and the press.

60. In reply to some members of the Committee who had expressed surprise at the rather low amount of compensation, he said that, in addition to the compensation provided for by law, the victim could bring an action against the person responsible and even, as appropriate, against the Government. There was also the possibiliy of ex gratia compensation, particularly in cases of abusive sentencing.

61. In reply to a question about the Antarctic, he said that, despite the absence of a permanent population, the law was definitely applicable there.

62. Concerning paragraphs 130 and 131, he said that not only confessions or admissions obtained by torture were inadmissible as evidence before the courts, but also all evidence obtained under similar conditions (expert reports, statements etc.).

63. Mr. KHITRIN said that he would like to know how Australia could justify life sentences in cases of rape. That was a penalty that could be characterized as cruel. Nothing comparable existed in most countries. He

wished to have figures indicating the number of sentences and the number of persons imprisoned for rape and to know whether the majority of persons in prison were not members of the indigenous population.

64. Mr. BROOME (Australia) said that the sentences given as examples were the maximum penalty; the sentence in each case was left to the discretion of the judiciary and, in practice, a life sentence amounted to 20 years' imprisonment. The sentence would also depend on the circumstances of the offence. The Australian population as a whole would none the less never agree that rape was not an offence deserving of exemplary punishment. He could not quote figures, but would provide them in writing at a later stage. He was, however, in a position to say that persons convicted of rape were not only members of the indigenous population. He gave examples to show that, when rape was accompanied by aggravating cicumstances, it entailed harsh penalities.

65. The CHAIRMAN warmly thanked the delegation of Australia for its precise and clear report and replies, as well as for its close cooperation with the Committee.

66. Mr. GIL LAVEDRA joined in the Chairman's congratulations, for, apart from the subleties of purely legal questions, the fact was that the standards were applied throughout the country. It might nevertheless be appropriate to include a more specific definition of torture in the legislation, as that was one of the main criteria used by the Committee against Torture.

67. Mr. SORENSEN said that he had been very impressed by the written and the oral reports of Australia and warmly thanked the Australian Govenment for its efforts in that regard.

68. Mr. BURNS (Country Rapporteur) congratulated the Australian delegation on its report and replies and thanked it for having been willing to answer the Committee's questions without any preparation. Australia was in the forefront of countries defending fundamental human rights. The fact that a definition of torture was not incorporated in a legislative text was not a violation of the Convention. He also commended Australia on the large number of rehabilitation services offered to victims of torture.

69. Mr. PERLAS (Alternate Country Rapporteur) said that he endorsed Mr. Burns' comments.

70. The CHAIRMAN, speaking on behalf of the Committee, sincerely thanked the delegation of Australia and indicated that Australia had made a declaration under articles 21 and 22.

71. Mr. Walker and Mr. Broome (Australia) withdrew.

The meeting rose a 5.55 p.m.

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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 97th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

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Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Bulgaria

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.97/Add.1.

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GE.91-14043/3926B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Bulgaria (CAT/C/5/Add.28)

1. At the invitation of the Chairman, Mr. Djambazov and Mr. Dobrev (Bulgaria) took places at the Committee table.

2. Mr. DJAMBAZOV (Bulgaria) said that the new Constitution of the Republic of Bulgaria, which had entered into force on 13 July 1991, faithfully reflected the dynamic and radical changes under way in his country and provided new solutions to fundamental problems. Consequently, some corrections had to be made to the initial report submitted in September 1991 (CAT/C/5/Add.28).

3. The new Constitution embodied the principle of the separation of powers and Bulgaria now had a sound legislative basis for setting up a consolidated independent judiciary on an equal footing with the legislative and executive powers. The new Constitution provided that all acts and decrees of the executive, including acts of the Council of Ministers, were subject to judicial supervision to ensure that they were in conformity with the laws. The law-making activities of the executive, including those of the Council of Ministers, had been strongly curtailed; article 114 of the Constitution stated that the Council of Ministers was entitled to issue normative acts only pursuant to and in implementation of the laws.

4. The new Constitution guaranteed the separate functioning, independence and equality of the judiciary. The courts had been brought under the sole authority of the Supreme Judicial Council, which was competent to deal with all matters concerning the appointment, promotion, demotion, reassignment or dismissal and remuneration of judges, prosecutors and examining magistrates. It drafted the budget of the judiciary and submitted it to Parliament for approval. Under the new Constitution, the status of judges had changed significantly: they were now irremovable and enjoyed the same immunity as members of the National Assembly. Those changes had strengthened the position of judicial officials as representatives of genuinely independent institutions and were of great importance for the defence of the legitimate rights and interests of citizens.

5. The Constitution pledged loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance and its preamble gave pride of place to the rights, dignity and security of the individual. According to article 6, paragraph 1, all persons were born free and equal in dignity and rights. Article 6, paragraph 2, provided that they were equal before the law and that there could be no restrictions on their rights or privileges on the grounds of race or nationality. Under article 28, all citizens had the right to life and article 30, paragraph 1, embodied the principle of personal freedom and inviolability. Article 29, paragraph 1, stipulated that no person should be subjected to torture or cruel, inhuman or degrading treatment. Bulgaria's new Constitution thus codified the principles

of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international instruments, as well as the requirements of article 16, paragraph 1, of the Convention against Torture.

6. Bulgaria had no special legislation which regulated all aspects of protection against torture and other forms of cruel, inhuman or degrading treatment. However, the new Constitution provided for many ways of dealing with that problem, for which new penal and other laws would have to be adopted. Constitutional guarantees provided protection against the unlawful detention of citizens and restrictions on their liberties. Article 30, paragraph 2, thus stated that no person could be detained, subjected to inspection, search or any other infringement of his personal inviolability, except on the conditions and as established by a law. The competent State authorities could detain a citizen only in the urgent circumstances expressly stipulated by a law and they were required to notify immediately the competent judicial authorities, which had to rule on the lawfulness of detention within 24 hours (art. 30, para. 3).

7. Pre-trial detention could be authorized by the Prosecutor's Office, which was required to take cognizance of all the charges and details relevant to the detention and, if necessary to question the presumed offender directly. If the presumed offender was a minor, the prosecutor was required to question him directly in all cases (art. 36, para. 1, of the Act on the Prosecutor's Office). In that connection, he noted that paragraph 74 of the report was correct, but it did not provide a detailed picture of current legal practice. Extensions of the time-limit for preliminary investigations were still being allowed and questions were therefore being raised about the legal responsibility of the Prosecutor's Office in that regard.

8. Article 32, paragraph 2, of the Constitution guaranteed the inadmissibility of degrading treatment, stating that no person should be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except as otherwise provided by a law. Those constitutional provisions were of major importance, for the inhuman and degrading treatment of citizens by State organs had been common during the period of totalitarianism. The fact that there had been no recorded cases of torture in 1990 and 1991 was indicative of the country's peaceful transition from totalitarianism to democracy.

9. In the context of the inadmissibility of inhuman or degrading treatment, the Constitution promoted the principle of the rights of the defence; article 30, paragraph 4, provided that everyone was entitled to legal counsel from the time he was detained or charged. No one could be forced to plead guilty. Under article 31, paragraph 2, no defendant could be convicted solely by virtue of a confession and, according to article 31, paragraph 4, the rights of a defendant could not be restricted beyond what was necessary for the purposes of a fair trial.

10. There were still some discrepancies between the new Constitution and the penal legislation in force, which was also not in conformity with the Convention. For example, the main purpose of the Penal Code and the Code of Criminal Procedure was to determine criminal responsibility for the commission of physical offences, but they said nothing about mental and psychological

forms of violence and degrading treatment. Bulgaria had no specific legal provisions on the prohibition of and criminal responsibility for mental and psychological suffering. It therefore had to make a serious reassessment of penal and penitentiary practice as a whole.

11. With regard to paragraph 63 of the report, he noted that, under the Penal Code, not all forms of torture were considered to be crimes. Articles 142, 187, 407 and 419 of that Code did not cover all possible forms of cruel or degrading treatment, particularly of detainees and prisoners. However, the modernization of Bulgarian penal legislation was expected to take account of mental and psychological forms of violence and degrading treatment.

12. Since Bulgaria still did not have any special law covering the subject-matter of the Convention, article 5, paragraph 4, of the new Constitution was particularly relevant. It stated that international instruments which had been ratified by Bulgaria under the constitutionally established procedure were to be considered part of Bulgarian domestic legislation and would supersede any domestic legislation to the contrary. The provisions of the Convention were thus valid in his country.

13. In order to ensure the success of the democratic process, Bulgaria was making efforts to lay entirely new legal foundations. All the legislation which had been adopted during the period of totalitarianism could, however, not be changed overnight. It was therefore being used to the extent that it could serve the legislative needs of democracy. It was clear that legislative conflicts would arise and, in order to deal with them, the Constitution contained transitional provisions stipulating that the provisions of existing legislation were applicable unless they were contrary to the Constitution. Provisions which were in conflict with the Constitution were thus to be considered abrogated or void by virtue of the Constitution itself.

14. In accordance with the Constitution, the Constitutional Court had been established on 3 October 1991 to rule on the compatibility of the Constitution and international instruments concluded by the Republic of Bulgaria prior to their ratification by Parliament. Other very important structural laws, including the Act on the Supreme Judicial Council and the Local Self-Government and Local Administration Act, had also been adopted. The system of courts and tribunals was undergoing changes and the new Penal Code, Code of Criminal Procedure and Act on the Execution of Sentences were being drafted. There was also an urgent need for new legislation to replace the Juveniles' Antisocial Behaviour Act.

15. Referring specifically to the report, he said that a number of paragraphs had to be amended as a result of the far-reaching changes taking place in his country. The first sentence of paragraph 3 should be disregarded and chapter 2 of the new Constitution, on the fundamental rights and obligations of citizens, taken into account. In paragraph 23, it should be taken into consideration that new legislation concerning the Ministry of Internal Affairs had been adopted by Parliament in 1991 and that draft legislation on the police, the national administration for the defence of the Constitution and the national investigating administration was now before the Parliament. The text of paragraph 25 should be deleted, since the Constitutional Court was competent to decide whether legislation was contrary to the Constitution. Article 5,

paragraph 4, of the new Constitution should be taken into account in the context of paragraph 27. The first sentence of paragraph 30 should be deleted and it should be borne in mind that article 119 of the new Constitution stated that justice was to be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, assize courts and district courts and that the judiciary had changed from a two-tier to a three-tier system. The functions of the Constitutional Court should be taken into account in paragraph 31. In paragraph 49, it should be noted that the second free and democratic elections had been held in Bulgaria on 13 October 1991 and that a new Government had been formed under the current Prime Minister, Mr. Filipe Dimitrov. Elections for the Presidency were to be held on 12 January 1992.

16. In conclusion, he noted that the late submission of the report had been the result of the major democratic changes taking place in his country. The new Government of Bulgaria was ready to continue to cooperate closely with the Committee in future.

17. Mr. KHITRIN (Country Rapporteur) commended the Bulgarian delegation on its report and oral introduction, which reflected some of the major reforms taking place in Bulgaria. On his own behalf and that of the Committee, he congratulated Mr. Mikhailov on his recent election to the Bulgarian Parliament and wished him every success in his contribution to efforts to strengthen the rule of law and human rights and to eliminate torture in the country.

18. He had noted with satisfaction that the Government of Bulgaria was considering the possibility of withdrawing its reservations to the Convention and that the Parliament had decided to include a provision prohibiting torture in the new Constitution. He was also pleased to see that steps were being taken to amend obsolete legislation.

19. Referring to paragraph 83 and 84 of the report relating to article 11 of the Convention, he welcomed Bulgaria's critical approach to existing legislation and noted that the intention was to adopt regulatory instruments taking account of the requirements of the Convention. He regretted, however, that legislative provisions directly concerned with the implementation of the Convention had not been quoted in the report and asked whether the concept of mental suffering was included in provisions defining torture. He would like to have a brief description of the current situation with regard to the practical implementation of the Convention. Could a Bulgarian court invoke the Convention in its decisions? If so, he would be interested to have details of relevant cases. In the absence of specific legislation relating to matters of concern to the Committee, he requested information on the legal basis for measures to protect the rights of the individual.

20. He wished to know what the 10 types of penalty referred to in paragraph 14 of the report were. What were the penalties prescribed for "officials of the system of justice" mentioned in paragraph 15? He requested the Bulgarian delegation to provide at least one relevant judgement by a court.

21. He asked whether the Ministry of the Interior or the Ministry of Health was responsible for the compulsory medical measures referred to in paragraph 22. What were the legal safeguards against political prisoners being placed, as in the past, in psychiatric hospitals?

22. Paragraph 27 of the report stated that ... "it is impossible, other than by virtue of the law, to declare any act a crime and to prescribe a penalty on the basis of another enactment, even in international convention or agreement". Could the provisions of the Convention be invoked in the decisions of a court?

23. In connection with paragraph 28, he requested the Bulgarian delegation to list the authorities empowered to investigate crimes. Were State security bodies investigating any cases and, if so, what kind? Were there plans to set up an investigatory committee and what would its functions be?

24. In paragraph 31, the Department of Public Prosecutions was described as planning and waging "the struggle against crimes and other offences", but, in his view, such a department should be concerned exclusively with establishing the facts, not with fighting crime.

25. With regard to paragraph 33, he was surprised that there were as many as 1,444 persons in police custody. He wondered whether a mistake had not been made in the figures.

26. Turning to article 2 of the Convention, he asked what "necessary administrative measures" were taken to ensure in practice that torture or any other form of cruel, inhuman or degrading treatment or punishment was not used, as stated in paragraph 55.

27. In connection with article 3 of the Convention, he understood that Bulgarian legislation did not prohibit handing over an offender to another Government. He requested clarification of the provisions relating to article 3, since he believed that the translation of paragraph 60 might not be correct.

28. With respect to article 4 of the Convention, he asked what were the offences for which a person might be tried under article 287 of the Penal Code.

29. Referring to paragraph 73 of the report, he said he assumed that the person referred to as an "examining magistrate" was in fact an official of the Prosecutor's Office and entitled to make arrests.

30. Concerning article 7 of the Convention, he did not agree with the statement in paragraph 76 of the report that an offence involving inhuman or degrading treatment did not always constitute "a serious crime of a general nature". Any such offence was very serious and was a violation of human rights.

31. With regard to article 10 of the Convention, he asked what work was being done to train medical personnel in the requirements of the Convention.

Moreover, he did not understand why no preliminary medical examination was required at the time of detention, since it was precisely then that abuses could occur. He would welcome clarification as to whether a medical examination was arranged at another stage.

32. Concerning article 11 of the Convention, he asked for details of Bulgarian regulations relating to interrogation rules, methods and practices and arrangements for the custody and treatment of arrested or imprisoned persons. Were the rules consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners and in what cases had special measures, including the use of truncheons, been applied? He wished to have statistics of cases of suicides in prison.

33. As to article 12 of the Convention, paragraph 85 of the report stated that "prompt and impartial investigations are made into cases resulting in death or serious physical disability". But what happened if, for instance, a warder beat a detainee two or three times a week? That would also constitute a crime. The penalties imposed in the two cases quoted in paragraph 86 of the report were very mild indeed: there should be greater protection against such illegal practices and it might be concluded that the Convention was not being adequately implemented if guilty parties were not properly punished for their acts. He asked how many police officers had been dismissed for acts of ill-treatment against detainees and prisoners.

34. Ms. CHANET (Alternate Country Rapporteur) thanked the delegation of Bulgaria for its report and oral introduction and congratulated Mr. Mikhailov on his election as a member of the Bulgarian Parliament.

35. She asked whether there had been any new developments concerning the Prosecutor's Office. She would also like clarification of the role of the examining magistrate, who, according to paragraph 73 of the report, seemed to work under the prosecutor's supervision.

36. Like Mr. Khitrin she wished to know more about the compulsory medical measures referred to in paragraph 22 of the report. Had the unfortunate practices of the past been abolished or did the new legislation still provide for such treatment? She was concerned at the reference to compulsory medical treatment for excessive consumption of tobacco, which seemed to be a breach of personal freedom. Was such treatment used for any other conditions apart from drug abuse and alcoholism?

37. She had some questions about the figures given in paragraph 33 and asked whether 1,444 persons were being held pending trial or in police custody and for how long.

38. Referring to paragraph 34, she asked what was meant by "antisocial" acts and whether the concept applied only to juveniles.

39. In connection with the last sentence of paragraph 46 bis, she wished to know what punishment had been meted out to officials, lawyers, judges and other persons who had taken bribes.

40. As to paragraph 52, which stated that the death penalty had been widely applied in Bulgaria, she asked whether it was the Government's intention to repeal the death penalty altogether following the moratorium on executions mentioned in paragraph 53.

41. Turning to the specific articles of the Convention, she noted that paragraph 12 of the report stated that Bulgaria had no special law directly and exclusively regulating all aspects of protection against torture and other cruel, inhuman or degrading treatment or punishment. However, she pointed out that, in accordance with articles 1 and 4 of the Convention, States parties had to ensure that all acts of torture were offences under criminal law. She believed that the Bulgarian delegation was aware of that requirement.

42. In connection with article 2 of the Convention, paragraph 59 of the report stated that: "Under article 16 of the Penal Code, the only type of act not liable to punishment is an act carried out in compliance with an unlawful administrative order, transmitted through the regular channels, provided it is not obvious to the person complying with the order that it involves a criminal act. Accordingly, an order from a superior or a public authority may not be invoked to justify torture". She was not sure whether article 16 of the Penal Code was clear enough to ensure compliance with the requirements of article 2 and firm enough to avoid any doubt about such an order in the mind of a subordinate anxious to respect discipline.

43. Concerning article 3 of the Convention, the report was very frank in recognizing, in paragraph 60, that articles 435 to 441 of the Code of Criminal Procedure did not explicitly prohibit the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture. Had there been any instances of extradition in such circumstances and was it considered necessary to provide an explicit prohibition in the new legislation?

44. With regard to universal jurisdiction, paragraph 69 stated that the Penal Code was applicable "in respect of other offences perpetrated by aliens abroad". Did "other offences" include torture? She also wished to know which "crimes of a general nature" and which "serious crime of a general nature" were referred to in paragraph 76.

45. With respect to article 8, it was unfortunate that, as stated in paragraph 80, "The offences referred to in article 4 of the Convention are not included in the agreements on judicial assistance, as the latter were signed before the entry into force of the Convention". Did the Bulgarian Government intend to revise its extradition treaties to include those offences?

46. Referring to article 10 of the Convention, she asked whether it was the Government's intention to organize special training for the personnel mentioned in paragraph 1 of that article. She also asked for further details about the new training programme now being drawn up and what categories of persons it would be intended for.

47. The requirements of article 11 seemed to be met and, in that connection, she referred to paragraphs 37, 39, 40 and 56, but she would welcome clarification as to whether the new legislation would provide for a preliminary medical examination for detainees.

48. In connection with paragraph 84, she asked for details of the proposed amendments to article 87 of Regulation No. 5 of 1982, which allowed the use of rubber truncheons.

49. Concerning article 12 of the Convention and paragraph 85 of the report, she asked whether the Bulgarian authorities intended to introduce a system of protection involving investigations whenever acts of torture came to light, regardless of their consequences.

50. In connection with article 13, she asked whether there had been any complaints by victims of torture. She had understood the Bulgarian representative to say that there had been none; but the Committee had received a report from Amnesty International stating that there had indeed been such complaints. Amnesty International had written to the Bulgarian Government in October 1991, asking for clarification of those cases and she would like to know whether the delegation was in a position to provide the necessary information.

51. Referring to article 14 of the Convention, she asked whether the compensation provided under Bulgarian legislation was purely financial or whether there was any psychological, medical or occupational rehabilitation.

52. In connection with article 15 of the Convention, the wording of paragraph 95 of the report suggested that the Bulgarian Government was aware of the gaps in the provisions of its Code of Criminal Procedure and she assumed that it intended to make the necessary changes.

53. Mr. PERLAS thanked the Bulgarian delegation for its report and oral introduction and requested an explanation of the medical measures of constraint mentioned in paragraph 36.

54. In connection with paragraph 84, he wished to know what changes were going to be made to the regulation allowing for the use of rubber truncheons by agencies of the Ministry of the Interior in isolated cases of insubordination or brutal violation of internal order.

55. He had not understood paragraph 95 and requested that it should be explained. What were the economic and public organizations referred to in paragraph 88 and why were they exempt from liability? He would also like the "crimes against peace and against mankind", mentioned in paragraph 64, to be identified. Did such crimes include torture?

56. He stressed that, in the legislative changes under way in Bulgaria, due attention must be paid to the need to change attitudes by means of appropriate educational measures.

57. Mr. SORENSEN said that it was difficult to prepare a report in rapidly changing circumstances such as those in Bulgaria. He shared Mr. Perlas' concern about the importance of educational measures and would be interested to have further details of any special training and information the Government of Bulgaria intended to organize. Such details might be included in an annex to Bulgaria's next report, which was due shortly. The United Nations could give Bulgaria any assistance it might require in that regard.

58. He drew attention to the vital importance of rehabilitation as a means of firmly establishing a sense of justice among public opinion and expressed the hope that whatever measures were adopted by Bulgaria would ensure the full rehabilitation of victims of torture and the punishment of those guilty of torture. He asked whether there were any institutions in Bulgaria that specialized in the rehabilitation of torture victims and informed the delegation that the Committee would be pleased to help Bulgaria set up such institutions if it wished to do so.

59. Mr. BURNS said that, from the point of view of human rights, Bulgaria's recent history could be divided into three periods: the period before 1989, the period between 1989 and 1991, which was covered by the report, and the period since 13 July 1991, during which there had been very dramatic changes aimed at securely establishing the independence of the judiciary and implementing far-reaching reforms.

60. He had noted that the President of Bulgaria had not signed any death sentences for two years, but he was not sure whether capital punishment had actually been abolished in law and he asked for clarification of that point. He had also been struck by the statement in paragraph 52 that, as a percentage of its population, Bulgaria had the highest number of executions in Europe. He asked what the population of Bulgaria was.

61. Unless he was mistaken, the new Bulgarian law on confessions stipulated that no one could be convicted only on the grounds of a confession obtained by coercion. He pointed out that article 15 of the Convention categorically prohibited invoking as evidence any statement made as a result of torture and that that provision could not be departed from. He would appreciate further information on that apparent shortcoming of Bulgarian legislation.

62. With regard to article 14, the report described some of the civil remedies available to the victims of torture and he asked the delegation to provide any available data relating to successful actions to obtain compensation, as well as data on the ethnic composition of torture victims and persons who had been sentenced to death in the past, as there had been allegations of violations of the rights of the Turkish minority in Bulgaria. He asked whether any of those allegations had been substantiated and, if so, whether disciplinary charges or proceedings had been brought against any State agents involved in such violations.

63. Mr. DIPANDA MOUELLE, referring to the medical measures of constraint mentioned in paragraph 36 of the report, asked how those measures were enforced by the courts and, in particular, whether enforcement was by means of a court order. Paragraph 40 stated that bodies responsible for the enforcement of sentences were required fully to assist magistrates during the enforcement

of sentences and he asked what those bodies were and whether they were different from judges. He was not sure about the meaning of the statement in paragraph 47 that the Supreme Court had ordered the courts to convict persons guilty of any breach of the law, regardless of their position and social status. That statement seemed to guarantee equality before the courts, but he questioned whether it should be the responsibility of the Supreme Court to make such an order and suggested that the lower courts themselves should apply the principle of equality without being ordered to do so.

64. He noted from paragraph 51 that provision for the death penalty was included as a temporary measure in the Bulgarian Penal Code and he asked when it was applied and what was meant by the words "foundation of the Republic" in connection with crimes that carried the death penalty. He also wished to know whether the camps at Belene, Lovech and Scravena had been closed down and whether they had been replaced by a hospital or any other similar institution.

65. Mr. GIL LAVEDRA said that he understood the problems involved in preparing a report containing a definitive analysis of the situation in Bulgaria. He was particularly interested by the machinery adopted under the new Constitution to guarantee the constitutionality of the laws. He noted from paragraph 25 that, under the Constitution, Parliament alone could decide whether a law contravened the Constitution and he asked whether the monitoring of constitutionality would be centralized and who would be entitled to invoke the unconstitutionality of law. He also asked for an outline of the structure of the future legal system in Bulgaria and he would be grateful for information on the body which would be responsible for the enforcement of sentences and for monitoring conditions of detention.

66. The CHAIRMAN said that he was aware of the importance of the major reorganization of the Bulgarian legal system and, in particular, of the roles of the public prosecutor and his office. He wished Bulgaria every success in that enormous undertaking and said he was confident that, in view of the record time in which Bulgaria had adopted its new Constitution, it would also be able to bring about the necessary legal reforms just as rapidly. His confidence was bolstered by the fact that Bulgaria would be able to count on the valuable assistance of Mr. Mikhailov, whom he congratulated on his election to the country's Parliament.

67. Turning to specific aspects of the report, he asked for clarification of the statement in paragraph 39 that constant and strict monitoring guaranteed that measures of constraint could not be employed against individuals who were parties to criminal proceedings except in the circumstances and under the terms laid down by the Code of Criminal Procedure. Who carried out such monitoring and how? Paragraph 41 did not make it clear whether prisons came under the responsibility of the public prosecutor and he asked whether that was in fact the case.

68. The Bulgarian delegation should also supplement the information provided in paragraphs 55 to 59 with details not only of judicial, but also of any administrative measures adopted to prevent torture. It was stated in paragraph 60 that the Code of Criminal Procedure did not explicitly prohibit the expulsion, return (refoulement) or extradition of a person to another State where there were substantial grounds for believing that he would be in

danger of being subjected to torture, but he thought that article 3 of the Convention was applied directly in Bulgaria. However if that was not the case, it would be necessary to amend the country's legislation. Although the definition of torture under Bulgarian law was also not in conformity with that of the Convention, he was confident that that defect would be remedied by the legal reforms that were under way.

69. Paragraph 79 did not make it clear how Bulgaria applied the provisions of article 8, paragraphs 2 and 3, of the Convention and, according to paragraph 81, the legal assistance afforded by Bulgaria to other States in connection with criminal proceedings brought in respect of acts of torture did not seem to be as extensive as required by article 9, but he trusted that the relevant provisions of domestic legislation would probably also be amended. The failure to provide education and information for the police regarding the prohibition against torture was a curious oversight which he hoped would be remedied. He requested an explanation of the part of paragraph 92 referring to cases where the State was not liable for compensation or where the compensation was reduced. He also asked whether there had been any cases in which action had been taken against persons responsible for acts of torture under the previous regime and whether any compensation had been paid to the victims. He looked forward to receiving further details of the process of legal reform in the next periodic report of Bulgaria.

The public meeting rose at 11.50 a.m.

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Seventh session

SUMMARY RECORD OF THE 98th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 1991, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.05 p.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 7) (A/RES/45/155; A/CONF.157/PC/6/Add.4 and A/CONF.157/PC/13)

1. The CHAIRMAN said that the World Conference on Human Rights would be held in Berlin in 1993 and that the Committee against Torture had been invited to take part in the Preparatory Committee of the Conference. Ms. Chanet had represented the Committee at the first meeting of the Preparatory Committee, which had been held from 9 to 13 September 1991; and Ms. Diaz Palacios had been the alternate member.

2. Since Ms. Chanet and Ms. Diaz Palacios were not standing for re-election to the Committee, Mr. Sorensen and Mr. Mikhailov had been appointed representative and alternate, respectively, to the Preparatory Committee.

3. He read out the list of documents received by the Committee against Torture: General Assembly resolution 45/155 of 18 December 1990 (A/RES/45/155), Commission on Human Rights resolution 1991/30 of 5 March 1991, recommendations submitted by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination (A/CONF.157/PC/6/Add.4), the report of the Preparatory Committee for the World Conference on Human Rights (A/CONF.157/PC/13) and the unofficial text of Ms. Chanet's statement to the first preparatory meeting.

4. Speaking as a member of the Committee, he asked Ms. Chanet whether, in the light of experience, she considered that the Committee against Torture should have held a discussion beforehand and given its representatives instructions and whether she thought that it would be useful to submit written recommendations to the Preparatory Committee, as other committees intended to do.

5. Ms. CHANET, reporting on her participation as an observer in the Preparatory Committee for the World Conference on Human Rights, which had met in Geneva from 9 to 13 September 1991, and replying to the Chairman's questions, said she agreed that a preliminary discussion was necessary, since the person who was supposed to represent the Committee required, if not strict instructions, at least some guidelines. Such a discussion had in fact taken place at the April session. It would also be very useful to submit written recommendations to the Preparatory Committee.

6. With regard to procedure, she drew attention to the list of States represented at the first meeting of the Preparatory Committee (p. 3 of the Preparatory Committee's report). Some least developed countries had found it difficult to send representatives and the secretariat had been requested to deal with that problem so that all countries could be represented at later meetings of the Preparatory Committee. She pointed out that the Committee against Torture was listed under "Human rights bodies", as though it had been hard to find a generic term to describe all the bodies active in that field. An impressive number of non-governmental organizations had attended the meeting.

7. The Preparatory Committee had elected its officers. Mrs. Warzazi had been elected Chairman. The vice-chairmen were eminent persons from Venezuela, China and Ireland and the rapporteur was Polish. The Preparatory Committee's work had consisted mainly in hearing the many statements which had been made by States and non-governmental organizations and the texts of which were not yet available.

8. As mentioned in annex II of its report, the Preparatory Committee had decided that the World Conference should be convened in Berlin for two weeks in 1993. Meanwhile, the Preparatory Committee would meet twice in 1992, including once at the end of March, and once in 1993. Regional meetings would also be held in preparation for the Conference.

9. In substance, the statements by States had contained no surprises: there had been, a confrontation of traditional concepts of human rights. Some countries had hardly changed their position at all, but others had reached a turning point, which was a good omen for the Conference.

10. The most specific substantive issue discussed at the first meeting of the Preparatory Committee had been that of studies. She referred to annex II, page 9, of the report of the Preparatory Committee, which proposed an update of the compilation of international instruments and of United Nations action in the field of human rights, as well as the inclusion in the documents of the Conference of reports of meetings organized under the auspices of the United Nations human rights programme. A sensitive issue that would give rise to a serious problem of political strategy was the preparation of a limited number of short, analytical and action-oriented studies on the topics proposed by the General Assembly. It was stated that those studies should be prepared "Bearing in mind ... statements" made at the first meeting of the Preparatory Committee, but those statements were so contradictory that it would be difficult to follow that instruction.

11. She recalled that, according to General Assembly resolution 45/155, the aim of the Conference was to assess progress in the field of human rights since the adoption of the Universal Declaration of Human Rights, to examine the relation between development and the enjoyment by everyone of each of the rights, to examine ways and means to improve the implementation of existing human rights standards and instruments, to evaluate the effectiveness of the methods and mechanisms, to formulate concrete recommendations for improving the effectiveness of activities and to make recommendations for ensuring the necessary financial and other resources.

12. Everyone attending the Preparatory Committee had been able to address it, but she had been one of the few to make specific proposals. She had described the Committee against Torture, its functions and the way it worked and explained that it was at a turning point between two crucial periods, the first when international human rights instruments had proliferated and the second, now starting, when new demands and aspirations were coming to the fore. Despite all the instruments, however, many grave violations still occurred. There were also too many States that had either not acceded to those instruments or had done so, but had failed to fulfil their obligations. That was all the more serious in that it affected citizens who were unaware of their rights and could therefore not protect themselves.

13. She had argued that the World Conference should make a specific assessment of the ways and means available to it and be given the brief to approach its work in three different ways: first, States should be encouraged to accede to existing instruments without reservations. Secondly, new approaches should be explored in order to ensure broader and more specific observance of human rights and to consider the establishment of new structures to provide an immediate response in situations of flagrant and massive human rights violations. Thirdly, the questions of information and communication, education, technical assistance and research should also be a priority in the work of the Conference. There was a need to update structures and put all modern resources, including computer science, at the service of human rights. The United Nations would also need regional and national relays to make its work more efficient. Consideration might, for example, be given to the establishment of national human rights commissions, with specific powers to make proposals, hold consultations and disseminate information. Moreover, technical assistance and advisory services lacked coordination and would be more effective if they were expanded.

14. She had pointed out that those proposals could be implemented only if the human and financial resources of the Centre for Human Rights were strengthened. It might even be possible to consider setting up a genuine institute for human rights which would be responsible for human rights education, training and research. In conclusion, she had called for the mobilization of all energies: those of the United Nations, of States, of non-governmental organizations, of specialized agencies and of international treaty monitoring bodies.

15. The Preparatory Committee seemed to have heeded her advice, for, in document A/CONF.157/PC/13, it had decided to recommend that the General Assembly should encourage all those bodies to take part as observers in the work of the Preparatory Committee and the Conference.

16. She had not been aware of any difference between the status of observer and that of participant in the Preparatory Committee and considered that it would be necessary to be sure that observers at the Conference would be able to express their opinions and, for example, to defend the positions of the Committee against Torture.

17. The Conference was to take place in 1993. For the time being, matters did not seem to be moving very fast. To be effective, the proposed studies must be carried out, for they would form the very substance of the Conference. She requested Mrs. Klein, the representative of the Secretary-General, to give a progress report on preparation and coordination of the studies.

18. Mrs. KLEIN (Representative of the Secretary-General) said that the General Assembly, which was currently in session in New York, was considering the report of the Preparatory Committee for the World Conference on Human Rights and the budget of the World Conference. At the Centre for Human Rights, a core group of about five persons had been set up to assist Mr. Pace, the Secretary of the Preparatory Committee. Work had been suspended pending the decisions of the General Assembly, particularly with regard to financing.

19. The CHAIRMAN invited the members of the Committee to exchange views and state their positions on the idea of submitting written recommendations to the Preparatory Committee. He suggested that a small group consisting of Ms. Chanet, Mr. Sorensen and Mr. Mikhailov should be set up to draft the text.

20. Mr. SORENSEN said that he had been struck by the confrontation between the different concepts of human rights mentioned by Ms. Chanet. The Committee against Torture had much to say on that matter, since everyone, regardless of his view of human rights, believed that torture must be condemned. Action to combat torture might therefore be the basis for an agreement. Human rights were often abstract, whereas torture was something very specific that everyone rejected. That was why the Committee against Torture should play a leading role in the Conference.

21. He agreed with Ms. Chanet about the importance of the role of information, communication, training and research. He also stressed the need to create general awareness. At the Conference, people must be made to understand that torture was not a medieval institution, but was still being practised in some 60 countries at least. They must be made to understand how crucial torture was for democracy, since it was very difficult to have a dictatorship without torture and just as difficult to have a genuine democracy that did practise torture. It was therefore essential for the Committee against Torture to emphasize substantive issues and not become bogged down in procedural matters.

22. The CHAIRMAN suggested that the discussion should be resumed the next day. He nevertheless requested the small working group that had been appointed to start thinking about the content of a possible resolution or recommendation by the Committee, which might be approved in principle the following day.

23. Mr. GIL LAVEDRA said that the treaty monitoring bodies participating in the Conference should concentrate on the specific problems with which they were concerned. He endorsed Mr. Sorensen's suggestion that the Committee's text should deal with the specific question of torture and proposed that it should include Ms. Chanet's idea about mechanisms for improving the operation of international instruments. Consideration should also be given to concrete and practical ways of making States aware of those instruments.

24. Mr. MIKHAILOV said that he agreed to take part in the drafting group and suggested that it should meet the next day before the Committee's morning meeting.

25. Ms. CHANET said that she would unfortunately not be able to take part in preparing the draft resolution at such short notice because her duties as country rapporteur for Cameroon required her to spend her time studying the report submitted by the Cameroonian authorities.

26. Mr. SORENSEN said that he shared Ms. Chanet's doubts about the possibility of preparing a soundly based recommendation in so short a time. It was better not to have any recommendation at all than to submit an unsatisfactory text which might be contrary to the objective sought. Since

the precis-writers' work was so accurate, he suggested that the Committee should start by studying the record of the present meeting, which would summarize the main arguments put forward by each member.

27. Mr. MIKHAILOV, suggesting that the composition of the working group responsible for preparing the draft recommendation should be changed, said that he would give Mr. Burns his place so that the members of the group could communicate more easily and agree on a draft in a common language, namely, English. If a third person was needed, Mr. Gil Lavedra might help out.

28. Mr. BURNS said that the work of Mr. Sorensen and Mr. Mikhailov could be simplified by requesting them to prepare a draft recommendation on the basis of Ms. Chanet's suggestions and Mr. Gil Lavedra's proposal to focus the text on the concept of torture, which was central to the Committee's terms of reference.

29. Mr. GIL LAVEDRA said he doubted whether it would be really useful to ask the working group to prepare a draft text which would then have to be translated into various languages before being submitted to the members of the Committee again for discussion on form and substance. Time could be saved by asking all members to do the groundwork and, in a discussion of about half an hour, clearly formulate the points that they would like to have included in the draft text. Mr. Sorensen and Mr. Mikhailov would then only have to summarize them in a very short text of about one page.

30. The CHAIRMAN suggested that the members of the Committee should adopt Mr. Gil Lavedra's idea and take up the discussion on the content of the recommendation again briefly at a future meeting. He would be grateful if Mr. Sorenson and Mr. Mikhailov would draft a text with the assistance of the Secretary of the Committee.

31. The meeting was suspended at 4 p.m. and resumed at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Bulgaria (CAT/C/5/Add.28) (continued)

32. At the invitation of the Chairman, Mr. Djambazov (Bulgaria) took a place at the Committee table.

33. Mr. DJAMBAZOV (Bulgaria) said he regretted that he had not been given much time to prepare sufficiently detailed replies. He therefore invited the members of the Committee to ask him further questions in case any points might not be clear.

34. In reply to Mr. Khitrin, he said he had already pointed out in his oral introduction to the report (CAT/C/5/Add.28) that there were still some gaps in the Bulgarian Penal Code. He was aware that the legislation did not specifically penalize persons who inflicted mental and psychological torture. He nevertheless noted that, under article 5 of the new Constitution, the provisions of the Convention could be directly invoked, as it had become an

integral part of domestic legislation. That article would offset some of the omissions in criminal legislation until such time as the current reform had been completed.

35. In reply to members who had asked him for further information on difficulties in fully implementing the Convention in Bulgaria, he said that, until the new Constitution had entered into force, international instruments could be implemented only after the adoption of a specific enabling act. That obstacle had now been overcome, as the new Constitution expressly provided for the direct application of any international instrument ratified by Parliament.

36. Other difficulties nevertheless remained. The Convention against Torture did not, for example, propose specific penalties. It would therefore be necessary to wait until the draft penal code and the draft code of criminal procedure, which were expected to be adopted in the first half of 1992, had established penalties in keeping with the gravity of offences.

37. In reply to the members who had asked him whether there was a specific law protecting Bulgarian nationals from degrading treatment, he said that, although no text had been adopted for that purpose, citizens of the Republic of Bulgaria enjoyed various types of protection, the most important of which were the guarantees embodied in the Constitution. The possibility available to a person who had been arrested of being represented by his legal counsel in the early stages of the preliminary investigation was one form of protection, and the disciplinary measures provided for in some articles of the Penal Code, particularly articles 282, 285 and 287, were another. The direct application of the Convention in Bulgaria and the obligations it imposed also protected citizens against all types of abuse. Such guarantees were, however, far from adequate and the new penal legislation would ensure that they were improved and extended.

38. In reply to a question concerning penalties under the Penal Code and, in particular, penalties not involving deprivation of liberty, he read out the penalties listed in article 37, paragraph 1. In addition to deprivation of liberty, such penalties might take the following forms: corrective labour without deprivation of liberty; confiscation of property; fines; restricted residence without deprivation of liberty; deprivation of the right to hold a particular rank or exercise a particular function in public affairs; deprivation of the right to exercise a particular profession or activity, of the right to reside in an inhabited area and of the right to receive decorations, honorary titles or distinctions; military demotion; or public reprimand.

39. In reply to members who had asked whether State officials or members of the police who committed acts prohibited by the Convention were prosecuted and punished, he said that, in 1990 and 1991, 45 generals and 49 senior officers who had held posts of responsibility in the territorial and central police services had been dismissed, as had about one third of the officials of such services, particularly for having committed abuses of power during the assimilation campaign during which the names of some Bulgarian Turks and Muslims had been changed by force. Former communist party leaders and members of the Government had also been brought to justice and 12 of them were still under investigation.

40. Replying to the questions about medical treatment for persons who were not legally responsible or who were mentally deficient (para. 22 of the report), he said that all psychiatric hospitals in the country came under the Ministry of Health. Very strict measures had, moreover, been taken to prevent any interference or intervention by the police in such institutions. He nevertheless noted that no act of torture or degrading treatment had ever been reported in any centre for psychiatric treatment. In that connection, he pointed out that a special committee of the Interparliamentary Union had visited Bulgaria in 1984-1985 to conduct an inquiry in such institutions and it had not mentioned any reprehensible act in its report.

41. Judges were solely responsible for preliminary investigations. The State security service had been dissolved in early 1991 and it was therefore impossible for security officials to open an investigation.

42. With regard to the functions of the Prosecutor's Office, he referred to article 127 of the new Constitution, which stated that it was the duty of the Prosecutor to ensure that the law was respected. "Waging the struggle against crimes" (para. 31) was therefore not part of his duties. The question put by Mr. Khitrin suggested that there might be a mistake in the Russian version of the report submitted by the Bulgarian Government.

43. In reply to questions concerning paragraph 33 of the report, he said that the persons reported as being in penal establishments were in pre-trial detention. Conditions of detention were often better in prisons than in police stations. Moreover, the Penalties Enforcement Act provided for a special prison labour system whereby two days of work were equal to three days in prison. It was therefore easy to understand why the prison system was preferred. Untried prisoners who worked in prison were separated from other prisoners and enjoyed all the rights guaranteed by the Penalties Enforcement Act as long as they were in a penal establishment. They could therefore listen to the radio and watch television in their cells and there was no surveillance of their mail.

44. With regard to extradition, paragraphs 60 and 61 of the report showed that Bulgarian legislation was not in keeping with article 3 of the Convention. Now that the Convention had become part of domestic law, however, the gaps would have to be filled. Despite the gaps in the relevant Bulgarian regulations, moreover, there had not been any specific violation of article 3 of the Convention. Bulgaria was prepared to accede to the European Extradition Convention, and that would probably help it improve its legislation and practice. In that connection, he recalled that paragraph 69 of the report stated that the Penal Code was applicable to aliens who had committed crimes abroad which affected the interests of Bulgaria. The general offences referred to in paragraph 69 were not defined in the Bulgarian Penal Code, but they could be taken to include offences representing a danger for society.

45. Article 287 of the Penal Code related to crimes against justice which were committed by public officials in the exercise of their functions: on that point, he recognized, as indicated in paragraph 66 of the report, that the provisions of Bulgarian legislation were not expressly in conformity with the Convention.

46. In Bulgaria, there was no examining magistrate as such, but only "investigators". Drawing inspiration from the French system, the experts who had drafted the Constitution had urged that investigations should be the responsibility of judges, but Parliament had objected. None the less, unlike what had happened under the preceding regime, investigators no longer came under the Ministry of the Interior, but belonged to a separate administrative department.

47. As to the maximum duration of custody, while 10 days was the period provided for in the Code of Criminal Procedure, it was only 24 hours under article 30, paragraph 3, of the new Constitution. The latter provision obviously took precedence.

48. In reply to Mr. Khitrin's question on the implementation of article 7 of the Convention, he said that the country rapporteur for Bulgaria must have been misled by a translation mistake in the Russian version of paragraph 77 of the report because, in that regard, the provisions of the Code of Criminal Procedure were in conformity with the Convention.

49. Referring to the training of medical personnel, he said that the Ministry of Health, the Ministry of Justice and the Prosecutor's Office had requested assistance from the Council of Europe and the European Committee for the Prevention of Torture to develop a programme for that purpose. It would probably be a good thing if the Committee was also involved with the programme.

50. It was true that Bulgarian legislation did not provide for a preliminary medical examination at the time of imprisonment, but since the Convention was now applicable nationally, that situation could only improve. In Bulgaria, not only the Standard Minimum Rules for the Treatment of Prisoners, but also the European rules, which were even stricter, were in force. In the spring of 1990, a delegation of the Council of Europe had visited two Bulgarian prisons and had found no breach of those rules.

51. He admitted that there had been acts of brutality in Bulgarian prisons and indicated that, for offences of that kind, two prison guards had been put on trial and four others had been dismissed.

52. Turning to the questions put by Ms. Chanet, he said that the Prosecutor's Office was responsible only for supervising the work of the prosecutors. The relationship between prosecutors and investigators was governed by law and the former ensured only that the activities of the latter were in conformity with the law. Compulsory medical measures for persons who were not legally responsible (para. 22 of the report) applied, as in most countries, only in cases where they were necessary and it was up to a judge to decide on their application. He did not think that such measures had ever been applied in the case of excessive tobacco consumption.

53. The term "antisocial behaviour" in paragraph 34 of the report referred to offences committed by minors who had not reached the age of criminal responsibility and who could not therefore be brought before the courts. Replying to Ms. Chanet's question about sentences against officials of the

preceding regime who had been found guilty of taking bribes, he said that Parliament had adopted an amnesty act, but it did not apply to the most serious violations of the Convention.

54. Capital punishment was a serious problem, and not only in Bulgaria. Since 1989, Parliament had adopted a moratorium on capital punishment, but that did not mean that that sentence could not be handed down. He would therefore not go so far as to state, as Mr. Burns had, that capital punishment had practically been abolished in Bulgaria.

55. With regard to article 2 of the Convention, the Constitution and Bulgarian criminal law were both categorical about the right of a subordinate not to carry out an unlawful order. Article 57, paragraph 3, of the Constitution provided that that right applied even in situations of armed conflict, which could in no case abolish the fundamental rights of citizens.

56. Ms. Chanet had also asked which measures the Bulgarian Government intended to take in order to improve the implementation of article 8 of the Convention. Public officials did not have to have a new legislative text adopted for that purpose because the Convention was now directly applicable in Bulgaria, which was, as already indicated, about to accede to the European Convention for the Prevention of Torture and could also review agreements concluded with other countries.

57. In accordance with article 10 of the Convention, the Bulgarian Government wanted to improve the training of prosecutors, investigators and military, medical and prison personnel. To that end, it would like to implement the Council of Europe's Demosthenes Programme. The Standard Minimum Rules and the European Rules had been disseminated in all prisons, specifically for detainees. During Mr. Martenson's visit to Bulgaria some months previosuly, it had been decided that training seminars on human rights should be organized for Bulgarian experts and officials. The first seminar would take place in the second half of January 1992. Thanks to United Nations assistance, 10,000 copies of the United Nations compilation of human rights instruments had been disseminated in Bulgarian. In addition, the Ministry of Justice had set up a training programme specifically for prison staff.

58. According to the Amnesty International report, no case of torture or ill-treatment had been reported in Bulgaria since 1989. The cases referred to in the letter quoted by Ms. Chanet dated back to an earlier period; the persons concerned - Bulgarians belonging to the Turkish minority - had been released at the end of 1990.

59. In reply to a request for clarifications concerning paragraph 89 of the report, he explained that a distinction should be made between, on the one hand, the actions or acts of agents acting directly on behalf of the State which engaged the liability of the State and, on the other, the actions or acts of persons serving in economic or public organizations, such as trade unions, which did not engage the liability of the State. Bulgaria still had a fairly large number of public organizations which were not regarded as State bodies.

60. A member of the Committee had asked what was meant by crimes against peace and humanity. They included incitement to and preparation for war, the destruction of population groups and genocide (chap. 14 of the Penal Code).

61. He did not share Mr. Perlas' view that legislative reform could be carried out only with the support of citizens; the Bulgarian authorities would do their best to ensure greater respect for human rights through a change in attitudes and behaviour. He thanked Mr. Sorensen for his recommendations and said that the Bulgarian authorities would try to take the necessary measures with regard to the training of law enforcement officials and the rehabilitation of torture victims. The Committee's assistance would be of great value in that regard.

62. Replying to Mr. Burns, he confirmed that no one could be convicted on the basis of a statement obtained by torture; that was in line with the very spirit of the Constitution.

63. The amnesty act provided for the full rehabilitation of victims. The Government had allocated 120 million leva for the compensation of victims. For a country in a difficult economic situation, that was quite a large amount. Property that had been taken away from citizens was also being given back to them. No special body was responsible for investigating the situation of Bulgarians of Turkish origin; inquiries were conducted by local authorities, the Prosecutor's Office or officials of the investigation department.

64. Medical measures were applied only on the basis of a decision by the Prosecutor's Office or the judge. The Prosecutor's Office was responsible for monitoring the enforcement of judicial decisions and ensuring that conditions of detention were in conformity with the law.

65. Referring to the competence of the Supreme Court, which would in future be known as the Supreme Court of Cassation, he said that it played a role in coordinating and harmonizing jurisprudence. Its decisions were binding on all other courts and members of the Government.

66. In reply to a question about crimes against the Republic, he said that there was a special chapter in the Penal Code on that category of crime, which included treason, espionage and sabotage. In addition, the camps to which Mr. Dipanda Mouelle had referred had been eliminated two years previously. He had every hope tht that type of repressive structure would never again exist in Bulgaria.

67. With regard to the monitoring of the constitutionality of the laws, he pointed out that, for the first time in its history as a State, Bulgaria had established a Constitutional Court, was competent to take decisions on the constitutionality of the laws and, as appropriate, suspend the application of unconstitutional laws. Supervision by Parliament took place at another level; it could, for example, suspend the application of a ministerial decision if it was contrary to the Constitution. The role of the Constitutional Court was also essential in relation to international instruments because all of the international instruments to which Bulgaria wished to become a party had to be submitted for review to the Constitutional Court before being submitted to Parliament for ratification. That procedure was based on the French system.

68. Referring to the organization of the judiciary, he explained that, until now, the judicial system had consisted of a Supreme Court, 28 regional courts, 5 military court sand 118 district courts. The new Constitution had established a Supreme Court of Cassation, a Supreme Administrative Tribunal, courts of appeal, regional courts, military courts and district courts.

69. The CHAIRMAN proposed that, in view of time constraints, the consideration of the report of Bulgaria should be continued at the next meeting, if the Bulgarian delegation so agreed and if there were no objections.

70. It was so decided.

The meeting rose at 6 p.m.